

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

**CANDICE CLAIRE DYER
(126908)**

AND

**CANDICE DYER PERSONAL REAL ESTATE CORPORATION
(126908PC)**

CONSENT ORDER

RESPONDENTS: Candice Claire Dyer, Associate Broker, Max Wright Real Estate Corporation dba Sotheby's International Realty Canada, while licensed with Sea to Sky Real Estate Whistler Ltd. dba RE/MAX Sea to Sky Real Estate and West Coast Realty dba Sutton Group-West Coast Realty

Candice Dyer Personal Real Estate Corporation

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 Candice Claire Dyer ("Ms. Dyer"), on her own behalf and on behalf of Candice Dyer Personal Real Estate Corporation ("CD PREC").

WHEREAS the Proposal, a copy of which is attached hereto, has been executed by Ms. Dyer, on her own behalf and on behalf of CD PREC.

NOW THEREFORE, having made the findings proposed in the attached Proposal, and in particular having found that Ms. Dyer and CD PREC 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(b), and 3-4 of the Rules made under the RESA, pursuant to section 43 of the RESA the CORC orders that:

1. Candice Dyer and CD PREC be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$5,000 within three (3) months from the date of this Order.
2. Ms. Dyer, at her own expense, register for and successfully complete the “Representing Buyers in the Sale of New Homes and Condominiums” as provided by British Columbia Real Estate Association in the time period as directed by the Council.
3. Candice Dyer and CD PREC be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,500 within two (2) months from the date of this Order.

If Ms. Dyer and/or CD PREC 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 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.

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**CANDICE CLAIRE DYER
(126908)**

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**CANDICE DYER PERSONAL REAL ESTATE CORPORATION
(126908PC)**

**CONSENT ORDER PROPOSAL BY CANDICE CLAIRE DYER AND
CANDICE DYER PERSONAL REAL ESTATE CORPORATION**

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by Candice Claire Dyer ("Ms. Dyer") on her own behalf and on behalf of Candice Dyer Personal Real Estate Corporation ("CD PREC") 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, Ms. Dyer, on her own behalf and on behalf of CD PREC, and the Council have agreed upon the following facts:

1. Ms. Dyer (126908) has been licensed as a representative since 1997.
2. CD PREC (126908PC) became licensed on July 13, 2015.
3. At the relevant times, Ms. Dyer was licensed as an associate broker with Sea to Sky Real Estate Whistler Ltd. dba RE/MAX Sea to Sky Real Estate ("Sea to Sky") and as an associate broker with West Coast Realty.
4. Ms. Dyer's licensing history is as follows:

<u>Start Date</u>	<u>End Date</u>	<u>Brokerage</u>	<u>Licence Level</u>	<u>Licence Category</u>
05/07/2019	Present	Max Wright Real Estate Corporation dba Sotheby's International Realty Canada (X028689)	Associate Broker	Trading

<u>Start Date</u>	<u>End Date</u>	<u>Brokerage</u>	<u>Licence Level</u>	<u>Licence Category</u>
07/19/2018	05/07/2019	West Coast Realty dba Sutton Group-West Coast Realty (X003156)	Associate Broker	Trading
04/18/2016	07/19/2018	West Coast Realty dba Sutton Group-West Coast Realty (X032384)	Managing Broker	Trading
12/31/2015	04/18/2016	West Coast Realty dba Sutton Group-West Coast Realty (X003156)	Associate Broker	Trading
07/12/2012	12/31/2015	Sea To Sky Real Estate Whistler Ltd. dba RE/MAX Sea To Sky Real Estate (X030701)	Associate Broker	Trading
02/11/2009	07/12/2012	Sea to Sky Real Estate Squamish Ltd. dba RE/MAX Sea to Sky Real Estate Squamish (X016602)	Associate Broker	Trading, Rental
30/11/2007	02/11/2009	Sea to Sky Real Estate Ltd. dba Sea to Sky Premier Properties (X015056)	Associate Broker	Trading, Rental
17/11/2006	30/11/2007	Westbridge Real Estate Group Ltd. dba Macdonald Realty Squamish Whistler (X028821)	Managing Broker	Trading, Rental, Strata
05/10/2006	17/11/2006	Westbridge Real Estate Group Ltd. dba Macdonald Realty Squamish Whistler (X028821)	Managing Broker	Trading, Rental
21/07/2006	05/10/2006	Macdonald Realty Ltd. (WVan) dba Macdonald Realty (Wvan) (X027510)	Representative	Trading
20/11/2003	21/07/2006	West Coast Realty Ltd. (Wstlr) dba Sutton Group - West Coast Realty (Wstlr)(X027609)	Representative	Trading
15/01/1999	19/11/2003	*** Unlicensed ***		
15/01/1997	14/01/1999	Tribe Management Inc. (X012801)	Representative	Rental

5. This matter concerns Ms. Dyer's conduct while acting as representative to the buyers (the "Buyers") of a property located at XXXXX XXX XXXXXXXX in Squamish, BC (the "Property").

6. In or around May 2015, the Property was listed for \$1,298,000 by the then owner of the Property (the "Seller").
7. On or about November 15, 2015, Ms. Dyer prepared a contract of purchase and sale on behalf of the Buyers, as instructed by the Buyers (the "First Offer"). The First Offer was for a purchase price of \$1,100,000 including the following terms and conditions:

Deposit:	\$55,000 within 24 hours of final subject removal
Completion:	January 26, 2016
Possession:	January 27, 2016
Additional Terms:	"The seller will pay any GST in connection with this transaction."
Subjects:	Financing on or before November 25, 2015

(the "Terms and Conditions")
8. On the evening of November 15, 2015, the Seller's agent emailed Ms. Dyer a counteroffer for \$1,250,000 including the Terms and Conditions (the "First Counteroffer").
9. In the morning of November 16, 2015 at 6:38 am, Ms. Dyer emailed the Buyers:

"On the counter we have been able to get them down \$50,000 and absorb the GST. We may want to try \$1,150,000."
10. On November 16, 2015 at 8:00 am, the Buyers sent Ms. Dyer an email regarding the First Counteroffer, primarily with respect to proposed home finishes. The Buyers also made the following comment regarding price:

"What do you think of a counter of \$1,130,000 with the argument that they have omitted a lot and not provided the quality in the finishing that one would expect in a home like this."
11. During the afternoon of November 16, 2015, Ms. Dyer emailed the Buyers regarding the First Counteroffer. Ms. Dyer's email stated:

"Yes – I think the bottom line for this home is going to be \$1.2 including GST
Which means it is \$1.150 net roughly."
12. In the evening of November 16, 2015, Ms. Dyer emailed the Seller's agent a counteroffer for \$1,200,000 including the Terms and Conditions, as instructed by the Buyers (the "Second Counteroffer").
13. On November 17, 2015, Ms. Dyer emailed the Buyers regarding the Second Counteroffer:

"Just heard from the Realtor and the seller will not go below \$1,250,000 including tax
Net GST brings this to \$1,187,500
Please discuss and let me know how you would like to proceed."
14. On November 17, 2015, the Buyers emailed Ms. Dyer:

"We are not go [sic] above \$1.2M, including tax. It is not worth it."
15. On November 17, 2015, Ms. Dyer prepared another counteroffer for \$1,225,000 including the Terms and Conditions (the "Third Counteroffer").

16. On November 18, 2015, the Seller accepted the Third Counteroffer and the contract was formed as set out in the Third Counteroffer (the "Contract").
17. None of the First Offer, First Counteroffer, Second Counteroffer, Third Counteroffer nor Contract expressly state that the purchase price includes Goods and Services Tax ("GST").
18. On November 19, 2015, the Buyers emailed Ms. Dyer:

"Really dumb question, but just want to confirm: Our purchase price is only \$1,166,666.67 even though the contract sale price is \$1,225,000 because the seller will pay the GST?"
19. On November 19, 2015, Ms. Dyer responded to the Buyers:

"That is correct."
20. On November 21, 2015, a VanCity account manager emailed Ms. Dyer regarding the Buyers' financing application:

"I am working on the mortgage application for XXXXX and XXXXXXXXXX and was hoping you could confirm the purchase price for me. The contract states a purchase price of \$1,225,000 and that the seller will pay GST. Since I only have a scanned copy right now that is somewhat blurry, I cannot determine whether the GST is included in \$1,225,000 or whether it is on top of this amount. Can you please confirm exactly how much XXXXXXXXXX and XXXXX will be paying for this property?"
21. Also on November 21, 2015, Ms. Dyer responded to the VanCity account manager's email including the following:

"If you look at page 2 or 3 (sorry I don't have it with me) it states where you see the subjects that the GST is included in the purchase price so the net purchase price for XXXXXXXXXX and XXXXXX is \$1,167,666.67 [sic]."
22. Prior to the November 25, 2015 subject removal deadline, the Buyers removed all subjects and paid a deposit of \$55,000.
23. The Buyers say that their communications with Ms. Dyer led them to believe that the purchase price of \$1,225,000 on the Contract included GST, that the Seller would pay the GST and that the Buyers would pay a total of \$1,166,666.67 (including the deposit already paid).
24. Ms. Dyer explains that the communication with the Buyers with respect to net GST related to the bottom line for the Seller after the Seller paid the GST. Ms. Dyer says that the purpose of this communication was to demonstrate how the price of the Property compared to the prices of resale homes, in which GST was not payable, that the Buyers were considering.
25. In January 2016, at or around the closing of the transaction, the Buyers say that they were informed by their conveyancing solicitor that the Buyers were required to pay a total of \$1,225,000 (including the deposit already paid) in order to close the Contract.
26. The Buyers say that, based on the Buyers communications with Ms. Dyer and their mortgage advisor's communications with Ms. Dyer, they had only obtained financing for a purchase price of

\$1,166,666.67 which was approximately \$58,333.33 less than what they required for completion of the Contract.

27. The Buyers say that they were obliged to obtain a line of credit in addition to their mortgage in order to complete the transaction or risk being in breach of the Contract.
28. The Buyers completed the Contract. The Buyers' position is that they paid \$58,333.33 more than they had anticipated when they entered the Contract.
29. Ms. Dyer says that between 2014 and 2016, she was suffering from post-concussive symptoms that negatively impacted her job performance.
30. On June 13, 2016, the Buyers filed a Notice of Civil Claim in the Supreme Court of British Columbia against Ms. Dyer, CD PREC and Sea to Sky. Ms. Dyer has filed a Response to Civil Claim denying the Buyers' allegations.
31. A Notice of Discipline Hearing was issued on January 28, 2020 and served on Ms. Dyer on her own behalf and on behalf of CD PREC.
32. Ms. Dyer and CD PREC have a prior discipline history with the Council as follows:
 - a. On June 3, 2008, Ms. Dyer entered a Consent Order with the Council that she, as a managing broker for Westbridge Real Estate Group Ltd. dba MacDonald Realty Squamish Whistler be reprimanded as she committed professional misconduct within the meaning of section 35(1)(a) of the RESA in that she failed to ensure that the business of the brokerage was carried out in accordance with the RESA when she permitted an unlicensed individual to provide real estate services on behalf of the brokerage contrary to section 3-1(3) of the rules made under the RESA (the "Council Rules").
 - b. On December 9, 2015, Ms. Dyer entered a Consent Order with the Council that she be suspended for 14 days and pay a \$5,000 discipline penalty as she committed professional misconduct within the meaning of section 35(1)(a) of the RESA in that: contrary to section 3-3(1) and 3-4 of the Council Rules she failed to ensure all interested parties were notified of the date that offers would be presented in court; contrary to section 35(1)(c) of the RESA and/or section 3-4 of the Council Rules she failed to advise another realtor that she was acting as a limited dual agent; and contrary to section 35(1) of the RESA and/or section 3-4 of the Council Rules she failed to act honestly and/or with reasonable care and skill in preparing the Market Report.
 - c. On February 15, 2016, Ms. Dyer entered a Consent Order with the Council that she be reprimanded, complete remedial training and pay enforcement expense, as she committed professional misconduct within the meaning of section 35(1)(a) of the RESA in that she listed and offered for sale a property on which was located an "owner/builder" home as defined in the *Homeowner Protection Act* ("HPA"). The owner-built home was not permitted to be offered for sale due to deficiencies under the HPA which information was published and available to the public on the New Home Registry section of the Homeowner Protection Office website.

PROPOSED FINDINGS OF MISCONDUCT

For the sole purposes of the Proposal and based on the Facts outlined herein, Ms. Dyer and CD PREC propose the following findings of misconduct be made by the CORC:

Ms. Dyer and CD PREC committed professional misconduct within the meaning of section 35(1)(a) of the RESA, when, in her capacity as the Buyers' agent in the 2015 purchase of the Property, she:

- 1) failed to ensure that the contract of purchase and sale for the Property expressly and clearly stated that the indicated purchase price included the GST; and
- 2) advised the Buyers and the Buyers' financial institution of an incorrect amount for the purchase price and that no GST was payable by the buyers, which resulted in:
 - i. the financial institution approving the Buyers for funds in an amount that was insufficient to complete the purchase of the Property; and
 - ii. the Buyers having to obtain further financing for additional monies at a higher interest rate through a line of credit in order to complete the transaction;

contrary to sections 3-3(a) [duty to act in the best interest of the clients], 3-3(b) [act in accordance with the lawful instructions of the client], and 3-4 [act with reasonable care and skill] of the Council Rules.

PROPOSED ORDERS

Based on the Facts herein and the Proposed Findings of Misconduct, Ms. Dyer and CD PREC propose 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. Candice Dyer and CD PREC be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$5,000 within three (3) months from the date of this Order.
2. Ms. Dyer, at her own expense, register for and successfully complete the "Representing Buyers in the Sale of New Homes and Condominiums" as provided by British Columbia Real Estate Association in the time period as directed by the Council.
3. Candice Dyer and CD PREC be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,500 within two (2) months from the date of this Order.
4. If [Licensee Name] and CD PREC fail to comply with any of the terms of this Order, a discipline committee may suspend or cancel their licences without further notice to them.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. Ms. Dyer and CD PREC acknowledge and understand 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. Dyer and CD PREC acknowledge 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 CORC; 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. Dyer and CD PREC acknowledge 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. Dyer and CD PREC acknowledge 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. Dyer and CD PREC hereby waive their right to appeal pursuant to section 54 of the RESA.
6. If the Proposal is accepted and/or relied upon by the Council, Ms. Dyer and CD PREC will not make any public statement(s) inconsistent with the Proposal and its contents. Nothing in this section is intended to restrict Ms. Dyer and CD PREC from making full answer and defence to any civil or criminal proceeding(s).
7. The Proposal and its contents are made by Ms. Dyer and CD PREC 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. Dyer and CD PREC in any civil proceeding with respect to the matter.

"Candice Claire Dyer"

**CANDICE CLAIRE DYER on her own behalf and on
behalf of CANDICE DYER PERSONAL REAL ESTATE
CORPORATION**

Dated 18 day of August, 2020