

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  
MONICA SHIRLEY MCKINLEY  
(040659)

CONSENT ORDER

RESPONDENT: Monica Shirley McKinley, Trading Representative, Royal LePage in the Comox Valley, while licensed with Royal LePage Sussex

DATE OF CONSENT ORDER: July 16, 2020

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

COUNSEL: M. Sull, Legal Counsel for the Real Estate Council of British Columbia  
J. Scouten, Legal Counsel for the Respondent

PROCEEDINGS:

On July 16, 2020, the Consent Order Review Committee (“CORC”) resolved to accept the Consent Order Proposal (the “Proposal”) submitted by Monica Shirley McKinley (“Ms. McKinley”).

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

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

1. Ms. McKinley pay a discipline penalty to the council in the amount of \$1,500 within three (3) months of the date of this Order; and

**Monica Shirley McKinley**

---

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

If Ms. McKinley 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 16th day of July, 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**

**MONICA SHIRLEY MCKINLEY  
(040659)**

**CONSENT ORDER PROPOSAL BY MONICA SHIRLEY MCKINLEY**

---

**BACKGROUND AND FACTS**

This Consent Order Proposal (the "Proposal") is made by Monica Shirley McKinley 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. McKinley and the Council have agreed upon the following facts:

1. Ms. McKinley was at all relevant times licensed as a real estate trading and rental representative with RLPS Limited Partnership doing business as Royal LePage Sussex.
2. Ms. McKinley was licensed from 1986 to 1997 and from 2008 to the present. Ms. McKinley's decision not to maintain her licence from 1997 to 2008 was due to personal reasons, and does not relate to her conduct or competency as a licensee.
3. In or around May 31, 2015, Ms. McKinley entered into a Multiple Listing Contract with the owners of a property located at xxxx Wxxxx Sxxxx Dxxxx, Bowen Island, British Columbia (the "Property").
4. The Property was a rental property owned by a couple who had separated, SB being the husband and LB being the wife (together, the "Sellers"). The Multiple Listing Contract was executed by LB and by the mother of the husband, BJ, who was acting on behalf of her son pursuant to a Power of Attorney.
5. On October 26, 2015, LB and BJ (acting on her son's behalf) entered into a Contract of Purchase and Sale for the Property with two buyers (the "Buyers") with a completion date of November 30, 2015 and possession and adjustment dates of December 1, 2015 (the "Contract").

6. The Contract was subject to a number of conditions which were to be removed by the Buyers by November 4, 2015.
7. On November 4, 2015, the Sellers and Buyers agreed by way of an addendum to the Contract to extend the subject removal date to November 10, 2015.
8. On November 10, 2015, the Buyers removed all subjects.
9. On November 18, 2015, a fire occurred on the Property resulting in damage to parts of the home. The nature and likely cost of the work required to repair the damage, and the degree to which it may be covered by insurance, were unclear to the parties and their agents in the weeks after the fire occurred.
10. On November 19, 2015, Ms. McKinley exchanged a number of emails with the Sellers about the fire.
11. In one of the emails, BJ stated: *"I am going to contact a lawyer to get some input as to where do [sic] stand in all of this."*
12. On November 20, 2015, BJ sent a further email to Ms. McKinley which stated:

*It was suggested to us by a lawyer to complete the deal as planned on November 30, 2015 with the buyer's lawyer withholding a sum of let's say \$25,000 or (whatever) close to the estimate for the restoration and when the work is completed the difference could be sorted out if any.*
13. On November 23, 2015, the agent for the Buyers prepared an addendum to the Contract (the "Addendum") to extend the completion date to December 29, 2015 and the possession and adjustments dates to December 30, 2015. The agent for the Buyers sent the addendum to Ms. McKinley who forwarded it to the Sellers.
14. The Addendum also contained the following terms to address repairs from the fire:

*Buyer and Seller agree that the Buyer has the right to inspect the property to verify and be satisfied with the successful completion of the repairs and alterations to the wood burning stove and the fireplace caused fire, water and smoke damage prior to completion date.*

*Buyer and Seller agree that if all repairs and alterations are not completed by three business days prior to the current stated completion date that the completion, possession and adjustment dates shall be extended in two week increments until all work has been completed to the satisfaction of the Buyer.*
15. The Sellers and the Buyers executed the Addendum on November 23, 2015.

16. Ms. McKinley says that, as BJ had earlier indicated that she had already consulted a lawyer about how to proceed following the fire, she assumed that the Sellers would have consulted with their lawyer about the Addendum before signing it. Ms. McKinley has no knowledge of whether the Sellers in fact sought legal advice regarding the Addendum, however, and she acknowledges that she should have specifically advised them to do so before signing the Addendum.
17. Repairs to the Property were delayed due to a number of factors, including a coverage dispute with the Sellers' insurer, and the transaction did not complete on December 29, 2015.
18. A dispute arose between the Sellers and the Buyers over the parties' respective obligations under the Contract as amended by the Addendum.
19. The Buyers took the position that, under the terms of the Addendum, the Sellers were required to complete the repairs to the Property to the Buyers' satisfaction before they were required to complete the transaction, and that the completion date would be extended, without the need for further agreement, by two-week increments until such repairs were completed.
20. The Sellers, for their part, took the position that the Addendum was not intended to extend the completion date indefinitely pending completion of repairs to the Buyers' satisfaction, and that a further agreement or agreements would be required for any extension or extensions beyond December 29, 2015.
21. On or around January 21, 2016, Ms. McKinley advised the Sellers to obtain legal advice with respect to the enforceability of the Contract.
22. On June 8, 2016, the Buyers commenced a civil action against the Sellers seeking an Order for specific performance of the Contract. Both LB and SB filed their own responses to civil claim denying that the Contract was enforceable against them.
23. The repairs were eventually completed and the transaction completed in December 2016.
24. A Notice of Disciplinary Hearing was issued on December 18, 2018 and served on Ms. McKinley.
25. Ms. McKinley has no previous discipline history with the Council.

#### **PROPOSED FINDINGS OF MISCONDUCT**

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

1. Ms. McKinley committed professional misconduct within the meaning of section 35(1)(a) of the RESA in that while acting as the listing agent for the Sellers:
  - a. she failed to adequately advise the Sellers to obtain independent legal advice with respect to the terms in the Addendum to the Contract, contrary to sections 3-4 [*act with*

*reasonable care and skill*] and 3-3(d) [*advise client to seek professional advice on matters outside expertise*] of the Rules.

### **PROPOSED ORDERS**

Based on the Facts herein and the Proposed Findings of Misconduct, Ms. McKinley 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. McKinley pay a discipline penalty to the Council in the amount of \$1,500 within ninety (90) days of the date of this Order.
2. Ms. McKinley pay enforcement expenses to Council in the amount of \$1,500 within sixty (60) days from the date of this Order.
3. If Ms. McKinley fails to comply with any of the terms of this Order, a discipline committee may suspend or cancel Ms. McKinley's license without further notice to her.

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

1. Ms. McKinley 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. McKinley 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. McKinley 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. McKinley 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. McKinley 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. McKinley will not make any public statement(s) inconsistent the Proposal and its contents. Nothing in this section is

intended to restrict Ms. McKinley from making full answer and defence to any civil or criminal proceeding(s).

7. The Proposal and its contents are made by Ms. McKinley 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. McKinley in any civil proceeding with respect to the matter.

“Monica Shirley McKinley”

---

**MONICA SHIRLEY MCKINLEY**

**Dated 30 day of June 2020**