

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
SHABEEN MEHNAAZ ALI
(162930)

CONSENT ORDER

RESPONDENT: Shabeen Mehnaaz Ali, Trading Representative, Royal LePage Black Tusk Realty

DATE OF CONSENT ORDER: July 16, 2020

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

COUNSEL: C. Davies, Legal Counsel for the Real Estate Council of British Columbia

PROCEEDINGS:

On July 16, 2020, the Consent Order Review Committee ("CORC") resolved to accept the Consent Order Proposal (the "Proposal") submitted by Shabeen Mehnaaz Ali ("Ms. Ali").

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

NOW THEREFORE, having made the findings proposed in the attached Proposal, and found that Ms. Ali committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* ("RESA") and sections 3-2(2)(a), 3-3(a), and 3-4 of the Rules made under the RESA, pursuant to section 43 of the RESA the CORC orders that:

1. Ms. Ali's license be suspended for 14 days;
2. Ms. Ali be prohibited from acting as an unlicensed assistant during the license suspension period;

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3. Ms. Ali pay a discipline penalty to the Council in the amount of \$5,000 within three (3) months from the date of this Order;
 4. Ms. Ali, at her own expense, register for and successfully complete the Real Estate Trading Services 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; and
 5. Ms. Ali pay enforcement expenses to the Council in the amount of \$1,500 within two (2) months from the date of this Order.

If Ms. Ali 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*
SBC 2004, c 42 as amended**

AND

IN THE MATTER OF

**SHABEEN MEHNAAZ ALI
(162930)**

CONSENT ORDER PROPOSAL BY SHABEEN MEHNAAZ ALI

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by Shabeen Mehnaaz Ali ("Ms. Ali") 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. Ali and the Council have agreed upon the following facts:

1. Ms. Ali (162930) has been licensed as a trading representative since 2011.
2. Ms. Ali was at all relevant times licensed as a trading representative with Royal LePage Black Tusk Realty (the "Brokerage").
3. This matter arises from Ms. Ali's conduct when she acted as buyer's agent in the purchase and sale of a manufactured home located at x-xxxxx Gxxxxxxxx Rxxx, Squamish, BC (the "Property") in July 2016, and specifically from Ms. Ali's preparation of a proposed amendment to the contract of purchase and sale, as well as her handling of the buyer's deposit. The relevant conduct occurred within a 48-hour period over July 6-8, 2016.
4. On June 23, 2016, the buyer and seller entered into a contract of purchase and sale (the "Contract") with pertinent terms as follows:
 - a. purchase price of \$239,000;
 - b. subject conditions including approval of mobile home park rules and regulations, property inspection, approval of mobile home registration, and insurance;
 - c. subject removal date of July 7, 2016;
 - d. deposit of \$15,000 due within 48 hours of final subject removal;
 - e. completion date of July 29, 2016;

f. possession date of July 30, 2016.

5. On July 5, 2016, the buyer removed the subjects. Pursuant to the Contract, the deposit of \$15,000 was due within 48 hours of subject removal, i.e., July 7, 2016.
6. Also, on July 5, 2016, due to the buyer's concern with the state of certain aspects of the Property, Ms. Ali prepared a proposed amendment to the Contract (the "Proposed Amendment") containing new conditions relating to title, repairs and a holdback respecting the proposed repairs. The Proposed Amendment stated:

Subject to the Buyer on or before 7th July 2016 obtaining and approving a Property Disclosure Statement with respect to the information that reasonably may adversely affect the use or value of the property.

The Buyer proposes the amendment set forth below (the "Proposed Amendment") to the Contract of Purchase and Sale dated June 23rd, 2016 (the "Contract"). The Proposed Amendment is not intended to be a counteroffer or repudiation of the Contract. Unilateral execution of this Addendum by either party hereto shall not constitute a counteroffer and shall not, until executed by all parties, have any effect on the underlying Contract.

The Sellers, via their conveyancing, agree to provide The Buyer with a corrected title upon completion from xxxxx Gxxxxxxxxx Rd to xxxxx Gxxxxxxxxx road Squamish

The Sellers agree to repair the following 2 days prior to completion date and provide the Buyer with proper receipts and proof of all work done professionally:

1. The damaged gutters on both sides of the mobile.
2. Installation of fire alarms
3. Proper attachment of the heater vent in back bedroom ducting to the wall as the insulation is sticking out due to the ducting not being attached properly

The Buyers and sellers agree to a holdback of \$2500 the purchase price which will be released to the Buyer on Completion date should the above repairs not be completed by 27th July 2016.

7. Ms. Ali forwarded the Proposed Amendment to the seller's agent ("JB").
8. Ms. Ali did not tell her managing broker that she prepared the Proposed Amendment and forwarded it to the seller for execution. Nor did she seek advice from her managing broker about how to deal with the buyer's concerns with the Property.
9. On July 6, 2016, the following sequence of events occurred:
 - a. At 8:10am, Ms. Ali asked JB for the Proposed Amendment signed by the seller in order that her client could pay the deposit.

- b. At 9:08am, JB replied saying his client was working through the subject removal and requested proof of the deposit.
- c. At 12:35pm, the buyer hand-delivered a bank draft representing the deposit to the Brokerage. The bank draft was placed in a drop-box in the conveyance department, as per standard procedure at the Brokerage. When the conveyance staff noticed the bank draft, they prepared a deposit slip for it.
- d. At 12:42pm, Ms. Ali sent an email to JB confirming receipt of the deposit funds. The Brokerage's general ledger recorded the sum of \$15,000 even though the bank draft had not actually been deposited into the Brokerage's trust account.
- e. At 1:11pm, the buyer texted Ms. Ali asking her to not deposit the bank draft as she wanted to ensure the protection of the holdback clause in the Proposed Amendment.
- f. At 1:15pm, Ms. Ali emailed her managing broker regarding the situation.
- g. At 2:15pm, Ms. Ali emailed the conveyance department, copying her managing broker, requesting the bank draft be held and not deposited, as the buyer's instructions.
- h. The bank draft was not deposited into the brokerage's trust account.
- i. The managing brokers of both brokerages became involved in the matter, resulting in telephone calls and emails between them.
- j. The seller's brokerage was under the mistaken impression that the buyer had asked for return of the bank draft, when in fact it was merely being held by the Brokerage.

10. On July 7, 2016, the following sequence of events occurred:

- a. At 8:25am, JB emailed the Proposed Amendment back to Ms. Ali with the holdback clause crossed-out.
- b. At 9:25am, JB emailed Ms. Ali advising that the Sellers agree to the repair conditions in the Proposed Amendment, but not to the holdback clause.
- c. At 9:54am, Ms. Ali emailed the buyer the seller's revised Proposed Amendment, and the buyer responded saying she would not complete unless there was a holdback.
- d. At 12:37pm, JB emailed Ms. Ali for an update.
- e. At 1:18pm, Ms. Ali emailed the buyer asking her how she wished to proceed.
- f. The buyer obtained independent professional advice and at 2:12pm, she emailed Ms. Ali saying she was told the deal was dead because by crossing out the holdback clause, the sellers were making a counteroffer.

- g. At 5:30 pm, JB texted Ms. Ali advising that the seller would agree to the holdback clause.
11. On July 8, 2019, the following sequence of events occurred:
- a. At 8:39am, JB emailed Ms. Ali the Proposed Amendment signed by the sellers agreeing to the holdback clause.
 - b. At 12:35pm, the buyer emailed Ms. Ali advising that she had obtained independent professional advice, had decided to proceed, and instructed Ms. Ali to deposit the bank draft representing the deposit.
 - c. The bank draft was deposited in the Brokerage's trust account.
12. On July 29, 2016, the transaction completed.
13. On August 6, 2016, the Council received a complaint from JB.
14. Ms. Ali's managing broker told the Council that proper use of proposed amendments was raised with Ms. Ali following this transaction and was also discussed at a subsequent sales meeting at the Brokerage in November 2016.
15. A Notice of Discipline Hearing was issued on January 23, 2020 and served on Ms. Ali.
16. Ms. Ali has no prior discipline history with the Council.

PROPOSED FINDINGS OF MISCONDUCT

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

1. Ms. Ali committed professional misconduct within the meaning of section 35(1)(a) of the RESA in that when acting as buyer's agent pursuant to a contract of purchase and sale of a manufactured home located at 4-39784 Government Road, Squamish, BC in July 2016, and after the buyer removed the subject conditions of the contract:
 - a. she prepared for the seller's signature a proposed amendment to the contract without advising the buyer of the risk that the delivery of the proposed amendment to the seller without fresh consideration could constitute a counteroffer rendering the contract unenforceable, contrary to section 3-3(a) [*act in the best interests of the client*] and section 3-4 [*act honestly and with reasonable care and skill*] of the Rules;
 - b. she failed to keep her managing broker informed about the buyer's concerns with the property and of the fact that she prepared and submitted to the seller's agent for execution the proposed amendment described in paragraph (a) above, contrary to section 3-2(2)(a) [*keeping managing broker informed*] of the Rules;

- c. she failed to ensure that the buyer's bank draft representing the deposit required to be paid under the contract was immediately deposited into the brokerage trust account and instead instructed the brokerage's conveyance department to hold it pending receipt of the signed proposed amendment from the seller, contrary to section 3-3(a) [*act in the best interests of the client*] and section 3-4 [*act honestly and with reasonable care and skill*] of the Rules.

PROPOSED ORDERS

Based on the facts herein and the Proposed Findings of Misconduct, Ms. Ali 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. Ali's licence be suspended for 14 days.
2. Ms. Ali be prohibited from acting as an unlicensed assistant during the licence suspension period.
3. Ms. Ali pay a discipline penalty to the Council in the amount of \$5,000 within three (3) months from the date of this Order.
4. Ms. Ali, at her own expense, register for and successfully complete the Trading Services Remedial Education Course as provided by the Real Estate Division, Sauder School of Business at the University of British Columbia in the time period as directed by the Council.
5. Ms. Ali pay enforcement expenses to Council in the amount of \$1,500 within two (2) months from the date of this Order.
6. If Ms. Ali fails to comply with any of the terms of this Order, a discipline committee may suspend or cancel Ms. Ali's license without further notice to her.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. Ms. Ali 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. Ali 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. Ali 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. Ali 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. Ali hereby waives her right to appeal pursuant to section 54 of the RESA.
6. The Proposal and its contents are made by Ms. Ali 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. Ali in any civil proceeding with respect to the matter.

“Shabeen Mehnaaz ali

SHABEEN MEHNAAZ ALI

Dated 12th day of May, 2020