

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

MICHAEL CHARLES RUSSELL STEWART
(142162)

AND

MIKE STEWART PERSONAL REAL ESTATE CORPORATION
(142162PC)

CONSENT ORDER

RESPONDENTS: Michael Charles Russell Stewart, Representative, Oakwyn Realty
Downtown Ltd., while licensed with Century 21 In Town Realty

Mike Stewart Personal Real Estate Corporation

DATE OF CONSENT ORDER: May 21, 2020

CONSENT ORDER REVIEW COMMITTEE: R. Gialloreto
R. Hanson
Y. Amlani

COUNSEL: Menka Sull, Legal Counsel for
the Real Estate Council of BC

PROCEEDINGS:

On May 21, 2020, the Consent Order Review Committee ("CORC") resolved to accept the Consent Order Proposal (the "Proposal") submitted by Michael Charles Russell Stewart ("Mr. Stewart"), on his own behalf and on behalf of Mike Stewart Personal Real Estate Corporation ("MS PREC").

WHEREAS the Proposal, a copy of which is attached hereto, has been executed by Mr. Stewart, on his own behalf and on behalf of MS PREC.

NOW THEREFORE, having made the findings proposed in the attached Proposal, and found that Mr. Li 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. Stewart and MS PREC be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$2,500 within ninety (90) days of the date of this Order; and
2. Mr. Stewart and MS PREC be jointly and severally liable to pay enforcement expenses to Council in the amount of \$1,500 within sixty (60) days from the date of this Consent Order.

If Mr. Stewart and MS PREC fail 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 21 day of May 2020 at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

“Robert Gialloreto”

Robert Gialloreto
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

**MICHAEL CHARLES RUSSELL STEWART
(142162)**

AND

**MIKE STEWART PERSONAL REAL ESTATE CORPORATION
(142162PC)**

**CONSENT ORDER PROPOSAL BY MICHAEL CHARLES RUSSELL STEWART and MIKE STEWART
PERSONAL REAL ESTATE CORPORATION**

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by Michael Charles Russell Stewart ("Mr. Stewart") and Mike Stewart Personal Real Estate Corporation ("MS PREC") 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, Mr. Stewart on his own behalf and on behalf of MS PREC and the Council have agreed upon the following facts:

1. Mr. Stewart has been licensed as a trading representative since June 2005.
2. Mr. Stewart became licensed as MS PREC on August 28, 2012.
3. Mr. Stewart was at all relevant times licensed as a representative with Century 21 In Town Realty (the "Brokerage").
4. This matter arose out of real estate services related to property located at XXXX – XXX Keefer Street, Vancouver, British Columbia (the "Property").
5. At the material times, Pxxx Rxxx Hxxxxxxxxx (the "Client") was the registered owner of the Property.

6. In January 2015, the Client and Dxxxx Mxxxxxxx (the "Divorcing Spouse") commenced divorce proceedings and the Divorcing Spouse filed a Certificate of Pending Litigation and Caveat on title to the Property.
7. On June 1, 2015, an Order was made at a judicial case conference providing the Client and the Divorcing Spouse with a joint conduct of sale of the Property (the "Court Order").
8. The Court Order stated, *inter alia*:

The Keefer street property shall be listed for sale forthwith with the parties to have joint conduct of sale in so far as picking a realtor, determining a listing price and determining a sale price for the property.
9. On or about August 4, 2015, the Client listed the Property with Mr. Stewart as the designated agent. The Client signed the listing contract as the seller and the listing contract did not delineate from whom Mr. Stewart was receiving instructions.
10. The Client did not advise Mr. Stewart that he was divorcing his spouse or that the Divorcing Spouse was named in a court order granting the spouse joint conduct of sale of the Property until after the Client signed the listing contract for the Property.
11. On August 11, 2015, the Divorcing Spouse texted Mr. Stewart a photo of a portion of the Court Order relating to the joint conduct of sale.
12. On or about September 14, 2015, the August 4, 2015 listing contract was cancelled and another listing contract was entered into whereby the Client listed the Property again with Mr. Stewart as the designated agent. Again, only the Client signed the listing contract as the seller and the listing contract did not delineate from whom Mr. Stewart was receiving instructions.
13. The Client told Mr. Stewart to be "mindful of [the Divorcing Spouse's] needs in the sale".
14. On September 21, 2015, the Client entered into a contract of purchase and sale (the "Contract") for the sale of the Property with the following details:

Price: \$580,000.00
Deposit: \$30,000.00 within 24 hours of acceptance
Completion: November 26, 2015
Possession: November 27, 2015
15. On the same date, Mr. Stewart forwarded a copy of the Contract to the office of the Divorcing Spouse's counsel. The Divorcing Spouse reviewed the Contract and countered with a completion date of November 30, 2015 and a possession date of December 1, 2015.

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16. On September 22, 2015, the Divorcing Spouse's counsel sent the revised Contract reflecting the changes with respect to the completion date and the possession date to Mr. Stewart's office.
 17. Subsequently, on September 22, 2015, Mr. Stewart sent the Divorcing Spouse's counsel a copy of a counter offer presented by the buyer. The buyer accepted the Divorcing Spouse's requirement for a later completion and possession date, but required a price \$2,000 lower than the original offer:

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|-------------|---|
| Price: | \$578,500.00 |
| Deposit: | \$30,000.00 within 24 hours of acceptance |
| Completion: | November 30, 2015 |
| Possession: | December 1, 2015 |

(the "Counter Offer").

18. At the time the Divorcing Spouse's counsel received the Counter Offer on September 22, 2015, the Divorcing Spouse was at work and unable to review it. The Divorcing Spouse's counsel informed Mr. Stewart that he was unable to discuss the matter with her until she finished work.
19. On September 22, 2015, before the Divorcing Spouse's counsel was able to communicate with her, the Client advised Mr. Stewart that he wanted to accept the Counter Offer and the Client signed the addendum to change the price.
20. Mr. Stewart sent the Divorcing Spouse's counsel a revised Contract with the accepted sale price of \$578,500. The Divorcing Spouse had not signed the revised Contract.
21. Mr. Stewart believed that his Client discussed the Counter Offer with the Divorcing Spouse.
22. Although the RESA, regulations made under RESA and rules made under RESA ("Rules") do not address a licensee's obligations in the circumstances of this case, Mr. Stewart accepts that the Council has issued guidance in a newsletter advising licensees that both spouses must be involved in decisions relating to the sale of family property, even if one spouse is not on title.
23. On November 30, 2015, the Divorcing Spouse's counsel contacted the Managing Broker and requested that \$1,500.00, which was equivalent to the reduction in sale price, be taken from the sale commission and returned to the Client and Divorcing Spouse equally.
24. Mr. Stewart did not agree to grant the reduction in commission because he believed that he was properly following instructions from his Client.
25. A Notice of Discipline Hearing was issued on December 19, 2019 and served on Mr. Stewart and MS PREC.

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26. Mr. Stewart and MS PREC have no prior discipline history with Council.

PROPOSED FINDINGS OF MISCONDUCT

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

1. Mr. Stewart and MS PREC committed professional misconduct within the meaning of section 35(1)(a) of the RESA in that while in Mr. Stewart's capacity as the listing agent for the Property, he failed to ensure that the Divorcing Spouse was involved in determining the ultimate sale price of the Property, when Mr. Stewart knew about the divorce proceedings and the Court Order requiring joint conduct of sale, 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. Stewart and MS 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. Mr. Stewart and MS PREC be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$2,500 within ninety (90) days of the date of this Order.
2. Mr. Stewart and MS PREC be jointly and severally liable to pay enforcement expenses to Council in the amount of \$1,500 within sixty (60) days from the date of this Consent Order.
3. If Mr. Stewart and MS PREC fail to comply with any of the terms of this Order, a Discipline Committee may suspend or cancel their licenses without further notice to him.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. Mr. Stewart and MS 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. Mr. Stewart and MS 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.

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

"Michael Charles Russel Stewart"

**Michael Charles Russell Stewart on his own behalf and
on behalf of Michael Charles Russell Stewart Personal
Real Estate
Corporation**

Dated 8th, day of May, 2020