

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 RANDOLPH COWLING
(080279)

CONSENT ORDER

RESPONDENT: Michael Randolph Cowling, Managing Broker,
S-376 Holdings Ltd. dba Re/Max Michael
Cowling and Associates Realty

DATE OF REVIEW MEETING: March 12, 2020

DATE OF CONSENT ORDER: March 12, 2020

CONSENT ORDER REVIEW COMMITTEE: Y. Amlani
R. Hanson
S. Sidhu

PROCEEDINGS:

On January 21, 2020, a Consent Order Proposal submitted by Michael Randolph Cowling was considered by the Consent Order Review Committee ("CORC") but not accepted. On March 4, 2020, a revised Proposal acceptable to the CORC was submitted by Mr. Cowling (the "Proposal").

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

NOW THEREFORE, having made the findings proposed in the attached Proposal, and found that Mr. Cowling committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* ("RESA") and sections 3-4 and 5-13 of the Rules made under the RESA, pursuant to section 43 of the RESA the CORC orders that:

1. Mr. Cowling's licence be suspended for fourteen (14) days.
2. Mr. Cowling be prohibited from acting as an unlicensed assistant during the licence suspension period.

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3. Mr. Cowling pay a discipline penalty to the Council in the amount of \$2,500 within three (3) months of the date of this Order.
 4. Mr. Cowling, at his own expense, register for and successfully complete the Real Estate Trading Services Remedial Education Course as provided by the Real Estate Division, Sauder School of Business at the University of British Columbia within the time period directed by the Council.
 5. Mr. Cowling pay enforcement expenses to Council in the amount of \$1,500 within two (2) months from the date of this Consent Order.

If Mr. Cowling 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 12th day of March 2020 at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

"Sukmander Sidhu"

Sukhmander Sidhu
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 RANDOLPH COWLING
080279**

CONSENT ORDER PROPOSAL BY MICHAEL RANDOLPH COWLING

BACKGROUND AND FACTS

This Consent Order Proposal (the Proposal) is made by Michael Randolph Cowling (“Mr. Cowling”) 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. Cowling and the Council have agreed upon the following facts:

1. Mr. Cowling (080279) was at all relevant time licensed as a managing broker with S-376 Holdings Ltd. Dba Re/Max Michael Cowling and Associates Realty in Richmond, B.C.
2. Mr. Cowling’s licensing history is as follows:

START DATE	END DATE	BROKERAGE	LICENSE CATEGORY	LICENCE LEVEL
1989/04/01	1991/10/24	Andrews Realty Ltd. (X012935)	Trading, Rental	Representative
1991/10/24	1994/08/30	Prominent Realty Group Inc. (X014348)	Trading, Rental	Representative
1994/08/30	1995/05/15	Prominent Realty Group Inc. (Rhmd) (X018357)	Trading, Rental	Representative
1995/05/16	1996/01/04	Prominent Realty Group Inc. (X014348)	Trading, Rental	Representative
1996/01/04	1996/12/10	Prominent Realty Group Inc. (Rhmdbl) (X0225955)	Trading, Rental	Representative
1996/12/10	1997/05/09	Prominent Realty Group Inc. (X014348)	Trading, Rental	Associate Broker
1997/05/09	1999/05/04	Excellence in Real Estate Holdings	Trading, Rental	Associate Broker

		Corporation (X025955)		
1999/05/05	1999/09/02	Star-West Realty Ltd. (X022527)	Trading, Rental	Associate Broker
1999/09/02	Current	S-376 Holdings Ltd. (X026851)	Trading, Rental	Managing Broker

3. This matter arises from Mr. Cowling's role as sellers' agent in the sale of xxxxx Bxxxxxxx Pxxxxx, Richmond, B.C. (the "Property"). The complainants were the buyers in the transaction and were represented by a separate agent, Lx Xx ("Ms. Xx").
4. On July 24, 2015 the sellers received a letter from the City of Richmond (the "City"), indicating that the City's inspection of the Property found contraventions of the City's zoning and building bylaws. The City provided notice to the sellers to arrange removal of an illegal suite and to restore the building to its original plans by October 26, 2015.
5. On December 7, 2015, the sellers entered into a Multiple Listing Contract for the sale of the Property for a list price of \$1,150,000, with Mr. Cowling as their designated agent.
6. On December 13, 2015, the complainants viewed the Property.
7. On December 14, 2015, the complainants made an offer to purchase the Property for \$1,310,000, with payment of a \$45,000 deposit within 24 hours of acceptance and a completion date of February 24, 2016 (the "Offer"). The Offer was a subject free offer.
8. The complainants were not provided with a completed property disclosure statement at the time of making the Offer.
9. At the time of the Offer, Mr. Cowling was aware that the Property had unauthorized renovations which had been done without the appropriate permits from the City, specifically:
 - a. alterations to the back deck of the Property were unauthorized and the subject of an outstanding permit application to the City; and
 - b. the Property contained an illegal suite which was illegally rented out at the time of the Offer.

(the "Defects").
10. At no time did Mr. Cowling provide written disclosure of the Defects to Ms. Xx or to the complainants.
11. The Offer was accepted by the sellers on December 15, 2015 (the "Contract").
12. Mr. Cowling advised the Council that he verbally disclosed the Defects to the complainants when they visited the open house and that he again disclosed the Defects to Ms. Xx when the Offer was submitted by the complainants. Ms. Xx and the

complainants say that they were never informed by Mr. Cowling of the Defects prior to the acceptance of the Contract.

13. On January 14, 2016, Mr. Cowling provided a completed Property Disclosure Statement (the "PDS") to Ms. Xx. The PDS disclosed that the sellers were aware of additions or alterations made to the Property without the required permits and final inspection.
14. Mr. Cowling advised the Council that the PDS was completed and signed by the sellers at the time of listing the Property but was not delivered to Ms. Xx when the Offer was made.
15. On January 15, 2016, the complainants received the PDS and signed their acknowledgement of receipt of the PDS.
16. On February 16, 2016, the seller sent an email to Mr. Cowling instructing him to inform the complainants that as per the PDS, the sellers were working on the permit to have the alterations to the rear deck of the Property authorized by the City. The sellers advised that the application for the permit would not be completed by the completion date, so the sellers would leave the necessary paperwork for the permit at the Property for the complainants.
17. Mr. Cowling forwarded the February 16, 2016 email to Mr. Xx on the same day.
18. On February 24, 2016, the complainants completed the sale of the Property.
19. On March 8, 2016, Ms. Xx sent an email to Mr. Cowling advising that the complainants had discovered documents between the sellers and the City at the Property, including a site visit notice dated February 23, 2016 (the "Site Visit Notice"). Ms. Xx asked Mr. Cowling the following:
 - a. if the complainants needed to do anything further regarding the permit for the rear deck;
 - b. if there was a permit issued for the in-law suite; and
 - c. whether the Site Visit Notice was for the renovations and if so, whether the complainants needed to book re-inspection.
20. Ms. Xx did not receive a reply to the March 8, 2016 email from Mr. Cowling.
21. On March 23, 2016, the complainants received a letter from the City stating that they had been working with the previous owners to gain compliance with the City's zoning and building bylaws in respect of alterations made to the Property (the "City Notice"). The City advised that the Property had: more than the number of permitted dwelling units; additions and alternations; and encroachments into the rear yard setback. The complainants were advised they had until June 25, 2016 to arrange compliance.
22. On April 14, 2016, Mr. Xx sent an email to Mr. Cowling asking him to have the sellers contact the City to allow the complainants to continue with the original application to the City for the rear deck permit.

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23. On April 17, 2016, the sellers advised Mr. Cowling that the City advised them that the application had been closed and was not transferable from owner to owner.
 24. On April 17, 2016, Mr. Cowling responded to Ms. Xu advising that the seller would advise the City to release the required paperwork to the complainants and that copies of the paperwork for the deck permit had been left at the Property.
 25. In or about April 2016, the Complainants discovered that the sellers' application for the rear deck addition with the City was closed and the Complainants began the application process themselves.
 26. Since the sale of the Property, the complainants have been dealing with the City Notice without the assistance of the sellers.
 27. A Notice of Discipline Hearing was issued on September 18, 2019 and served on Mr. Cowling.
 28. Mr. Cowling has discipline history with the Council as follows:

Consent Order dated April 12, 2007

- a. Mr. Cowling entered into a previous Consent Order with the Council dated April 12, 2007 and admitted to professional misconduct within the meaning of section 35(1) of RESA.
- b. Specifically, Mr. Cowling admitted that in contravention of section 3-4 of the Rules (duty to act with reasonable skill and care), he failed to ascertain the nature of a caveat registered against title of the subject property which protected the interests of a title holder due to his mental incapacity; failed to provide a copy of the said listing contract to the Public Guardian and Trustee when advised that they represented the financial and legal affairs of said owner; and signed as witness to a signature on the listing contract without seeing that party sign the contract.
- c. Mr. Cowling's penalty included a seven (7) day suspension, completion of the Legal Update Course, and payment of enforcement expenses.

Consent Order dated February 19, 2009

- a. Mr. Cowling entered into an additional Consent Order with the Council dated February 19, 2009 and admitted to professional misconduct within the meaning of section 35(1) of RESA.
- b. Specifically, Mr. Cowling admitted that in contravention of section 27(2) of the *Real Estate Services Act*, he failed to promptly deposit four trust cheques received by the brokerage in the period of January 22, 2007 and April 12, 2007, into the brokerage trust account.

- c. Mr. Cowling also admitted that in contravention of section 6(2) of the *Real Estate Services Act*, and section 3-1 of the Council Rules, he failed to ensure that the business of the brokerage was carried out competently and in accordance with the Act, Regulations, Rules and Bylaws.
- d. Mr. Cowling's penalty included a discipline penalty of \$2,000, completion of disciplinary education assignment of Chapter 2 (Mandatory Requirements Under *Real Estate Services Act*) of the Broker's Licensing Course and payment of enforcement expenses.

PROPOSED FINDINGS OF MISCONDUCT

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

1. Mr. Cowling committed professional misconduct within the meaning of section 35(1)(a) of the RESA when acting as the listing agent for a property located at xxxxx Bxxxxxxxx Pxxxxx, Richmond, B.C, he:
 - a. failed to make written disclosure of known latent defects in the property to the complainants prior to his clients' acceptance of an offer, which defects included:
 - i. unauthorized alterations to the back deck of the property subject to an outstanding permit application; and,
 - ii. an illegal suite that was rented out illegally at the time of the complainant's offer

in contravention of section 5-13 of the Rules (disclosure of latent defects) and section 3-4 of the Rules (duty to act honestly and with reasonable care and skill).

PROPOSED ORDERS

Based on the facts herein and the Proposed Findings of Misconduct, Mr. Cowling 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:

6. Mr. Cowling's licence be suspended for fourteen (14) days.
7. Mr. Cowling be prohibited from acting as an unlicensed assistant during the licence suspension period.
8. Mr. Cowling pay a discipline penalty to the Council in the amount of \$2,500 within three (3) months of the date of this Order.

9. Mr. Cowling, at his own expense, register for and successfully complete the Real Estate Trading Services Remedial Education Course as provided by the Real Estate Division, Sauder School of Business at the University of British Columbia within the time period directed by the Council.
10. Mr. Cowling pay enforcement expenses to Council in the amount of \$1,500 within two (2) months from the date of this Consent Order.
11. If Mr. Cowling fails to comply with any of the terms of this Order, a Discipline Committee may suspend or cancel Mr. Cowling's licence without further notice to him.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. Mr. Cowling 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. Cowling 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 they are making the Proposal with full knowledge of the contents and the consequences if the Proposal is accepted.
3. Mr. Cowling 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. Cowling 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. Cowling hereby waives their right to appeal pursuant to section 54 of the RESA.
6. The Proposal and its contents are made by Mr. Cowling 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. Cowling in any civil proceeding with respect to the matter.

"Michael Randolph Cowling"

Michael Randolph Cowling

Dated 3 day of March 2020