

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
JOSEPH JOHN LIBERATORE
(164166)

CONSENT ORDER

RESPONDENTS: Joseph John Liberatore, Representative, Royal LePage
Real Estate Services Ltd. dba Royal LePage West Real
Estate Services

DATE OF REVIEW MEETING: December 9, 2019

DATE OF CONSENT ORDER: December 9, 2019

CONSENT ORDER REVIEW COMMITTEE: Y. Amlani
B. Chisholm
R. Hanson

PROCEEDINGS:

On November 6, 2019, a Consent Order Proposal submitted by Joseph John Liberatore ("Mr. Liberatore") was considered by a Consent Order Review Committee ("CORA") but not accepted. On November 29, 2019, a revised Proposal acceptable to the CORC was submitted by Mr. Liberatore (the "Proposal").

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

NOW THEREFORE, having made the findings proposed in the attached Proposal, and found that Mr. Liberatore 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(h) and 3-4 of the Rules made under the RESA, pursuant to section 43 of the RESA the CORC orders that:

1. Mr. Liberatore pay a discipline penalty to the Council in the amount of \$5,000 within ninety (90) days from the date of this Order; and
2. Mr. Liberatore, at his 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.

3. Mr. Liberatore pay enforcement expenses to the Council in the amount of \$1,500 within sixty (60) days from the date of this Order.

If Mr. Liberatore 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 9th day of December 2019, 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

**JOSEPH JOHN LIBERATORE
(164166)**

CONSENT ORDER PROPOSAL BY JOSEPH JOHN LIBERATORE

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by Joseph John Liberatore ("Mr. Liberatore") to the Consent Order Review Committee (the "CORC") of the Real Estate Council of British Columbia (the "Council") pursuant to section 41 of the *Real Estate Services Act* (the "RESA").

For the purposes of the Proposal, Joseph John Liberatore and the Council have agreed upon the following facts:

1. Mr. Liberatore (164166) has been licensed as a representative for trading services since 2012.
2. Mr. Liberatore was at all relevant times licensed as a representative for trading services with Royal LePage West Real Estate Services.
3. This matter involves a property located at #XXX-XXXX XXXXXXXX Street in Vancouver (the "Property"). The Property is part of a Strata Corporation XXX#XXXX (the "Strata Corporation").
4. At all material times, the Property was owned by SS and MR (the "Sellers").
5. On September 19, 2016, TB (the "Buyer") approached Mr. Liberatore at his brokerage's kiosk in a shopping mall. She indicated that she was living with her niece and wished to purchase a condominium and move in prior to December 2016. The Buyer was 78 years old at this time.
6. On October 18, 2016, the Sellers entered into a Multiple Listing Contract with a brokerage effective October 21, 2016 to sell the Property. The listing price of the Property was \$399,000. The designated agent was RK.
7. On October 18, 2016, the Sellers also completed a Property Disclosure Statement (the "PDS") which disclosed the following:

3H. Are you aware of damage due to wind, fire, or water? Yes

...

3J. Are you aware of leakage or unrepaired damage? Yes

...

DD. Are the following documents available?

...

All Minutes of Last 24 Months Including Council,
Special and AGM Minutes If available – from realtor

...

Engineer's Report and/or Building Envelope Assessment If available – from realtor

...

5. ADDITIONAL COMMENTS AND/OR EXPLANATIONS:

3H & 3J = Water leak was discovered on Balcony, and strata is investigating the leak.

8. On October 21, 2016, RK uploaded the PDS to the MLS system for buyers and their agents to review.
9. The Buyer wished to view the Property. On October 23, 2016, Mr. Liberatore made a request to view the Property.
10. On October 26, 2016, the Buyer and Mr. Liberatore viewed the Property. As the Buyer was interested in the Property, Mr. Liberatore requested strata documents from RK.
11. On October 27, 2016, the strata documents for the Property became available to RK; however, RK did not send these documents to Mr. Liberatore. Mr. Liberatore did not follow up on his outstanding request for the strata documents because in the meantime the Buyer had indicated to him that she no longer wished to make an offer on the Property.
12. On October 29 and 30, 2016, RK hosted two open houses at the Property. The Buyer attended on October 29 and viewed the Property a second time, this time without Mr. Liberatore.
13. On October 29, 2016, after viewing the Property for a second time, the Buyer changed her mind and informed Mr. Liberatore that she did in fact want to make an offer on the Property. Mr. Liberatore initially attempted to meet with the Buyer that day to make the offer but instead they arranged to meet the following day, October 30, 2016.
14. Between October 29, 2016, when the Buyer informed Mr. Liberatore that she was interested in making an offer on the Property, and meeting with the Buyer on October 30, 2016 to finalise the offer, Mr. Liberatore did not attempt to obtain the strata documents from RK.

15. On October 30, 2016 the Buyer made a subject-free offer on the Property drafted by Mr. Liberatore as her agent, which the Sellers accepted later that day (the "Contract"). The relevant details of the Contract were as follows:

Price: \$445,000

Deposit: \$20,000 within 36 hours of acceptance

Completion: November 30, 2016

Possession: December 1, 2016

16. The Buyer signed an Over Asking Price Statement/Addendum acknowledging that she was aware that the amount of the offer was in excess of the listing price. The Over Asking Price Statement/Addendum also contained an acknowledgement that:

All parties have been afforded the opportunity and advised to SEEK INDEPENDENT LEGAL/PROFESSIONAL ADVICE before signing this Agreement.

(emphasis in original)

17. The Buyer also signed a Waiver of Subjects Form, acknowledging numerous subject clauses that she did not want to be added to the Contract, which included an inspection, strata documents, engineering reports, envelope reports and legal/professional or other advice. The Waiver of Subjects Form also contained an acknowledgement that the Buyer had been advised and offered the opportunity to obtain "INDEPENDENT LEGAL/PROFESSIONAL ADVICE" (emphasis in original).
18. On October 31, 2016, the Buyer paid the deposit of \$20,000 to Mr. Liberatore's brokerage in trust in accordance with the Contract.
19. On November 2, 2016, the Sellers sent an email to RK notifying him that they had observed a notice for a Town Hall Meeting which was to take place on November 8, 2016, to discuss a Building Envelope Assessment Report and the implementation of a payment plan related to the Assessment Report. The notice also indicated that there would be a SGM on December 8, 2016. The Sellers indicated to RK that they did not receive any email regarding this meeting.
20. On November 3, 2016, RK forwarded that email from the Sellers to Mr. Liberatore and stated:

Hello Joe,

Following is an email I received from my client yesterday about a meeting scheduled in December.

The seller has not received a notice from the strata but did see the following message posted about the December meeting.

We just wanted to inform your buyer in case she wishes to attend the meeting.

21. Between November 3 and November 8, 2016, Mr. Liberatore did not request the strata documents from RK.
22. On November 7, 2016, the Sellers forwarded RK an email from the Strata Manager, which included a copy of the notice for an "Apartment Information Session" and the first part of the report from JRS Engineering (the "JRS Report"). The email indicated that the second part of the JRS Report would follow by email. RK forwarded this first email to Mr. Liberatore on November 9, 2016.
23. On November 9, 2016, Mr. Liberatore requested the strata documents from RK and RK sent them to him later that day.
24. The strata documents disclosed that:
 - a. On May 18, 2016, the Strata Corporation held a Special General Meeting. The minutes from that SGM recorded that the owners approved a special levy in the amount of \$15,000 to have a building envelope review completed and fund urgently needed repairs;
 - b. On August 31, 2016, the Strata Corporation held its Annual General Meeting. The minutes from that AGM recorded that the Strata Council contracted with JRS Engineering to conduct a Building Envelope Condition Assessment which would be completed in September 2016. Specifically the minutes noted that:

This will better guide us to complete a long lasting repair of the East side of the building and prepare a plan for the remainder of the apartment and townhouse complex.
 - c. On September 30, 2016, JRS completed its report. The JRS Report recommended a full building envelope remediation of the stucco cladding with estimated costs ranging from \$1,137,604 to \$1,587,572.
25. On November 9 or 10, 2016, Mr. Liberatore read the strata documents including the JRS Report and phoned the Buyer to inform her of the issues with the building envelope. The Buyer informed Mr. Liberatore that as a result of the issues with the building envelope she did not intend to complete the Contract. Mr. Liberatore had the Buyer sign a Release of Trust Funds and General Release.
26. On November 10, 2016, Mr. Liberatore informed RK that because of the issues with the building envelope the Buyer did not intend on completing the Contract and she was requesting the return of the deposit. Mr. Liberatore sent RK the Release of Trust Funds and General Release signed by the Buyer.
27. On November 16, 2016, the Sellers, through their legal counsel, informed the Buyer that the Sellers were ready willing and able to complete the Contract but in the circumstances and to avoid litigation were willing to offer a price adjustment on the Property. This offer was open for acceptance until November 24, 2016 (the "Reduced Price Offer").
28. The Buyer did not accept the Reduced Price Offer.

29. The Buyer did not complete on November 30, 2016 and the deal collapsed.
30. On October 30, 2017, the Buyer commenced an action against Mr. Liberatore's brokerage in Provincial Court for the amount of her deposit (the "Claim").
31. On September 24, 2018, the Court dismissed the Claim on the basis of the Buyer's default.
32. The Buyer's \$20,000 deposit which she paid pursuant to the Contract remains in trust with Mr. Liberatore's brokerage.
33. The Council issued a Notice of Discipline Hearing on March 13, 2019 and served it on Mr. Liberatore.
34. Mr. Liberatore 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, Mr. Liberatore proposes the following findings of misconduct be made by the CORC:

1. Mr. Liberatore committed professional misconduct within the meaning of section 35(1)(a) of the RESA in that:

while acting as the Buyer's agent in the sale of the Property in or about October and November 2016, he failed to ascertain and advise his client that the building in which the Property was located had suffered substantial water ingress damage, before the Buyer entered a contract for the purchase of the Property, contrary to section 3-3(a) (*act in the best interest of the client*), 3-3(h) (*discover relevant facts*) and/or 3-4 (*use reasonable care and skill*) of the Rules.

PROPOSED ORDERS

Based on the facts herein and the Proposed Findings of Misconduct, Mr. Liberatore 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. Mr. Liberatore pay a discipline penalty to the Council in the amount of \$5,000.00 within ninety (90) days from the date of this Order.
2. Mr. Liberatore, at his 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.
3. Mr. Liberatore pay enforcement expenses to the Council in the amount of \$1,500.00 within sixty (60) days from the date of this Order.
4. If Mr. Liberatore fails to comply with any of the terms of this Order, a Discipline Committee may suspend or cancel Mr. Liberatore's licence without further notice to him.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. Mr. Liberatore 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. Liberatore 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 he is making the Proposal with full knowledge of the contents and the consequences if the Proposal is accepted.
3. Mr. Liberatore acknowledges and is aware that the Council will publish the Proposal and the Consent Order or summaries thereof in its Report from the 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. Liberatore 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. Liberatore hereby waives his right to appeal pursuant to section 54 of the RESA.
6. If the Proposal is accepted and/or relied upon by the Council, Mr. Liberatore will not make any public statement(s) inconsistent with the Proposal and its contents. Nothing in this section is intended to restrict Mr. Liberatore from making full answer and defence to any civil or criminal proceeding(s).
7. The Proposal and its contents are made by Mr. Liberatore 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. Liberatore in any civil proceeding with respect to the matter.

"Joseph John Liberatore"

Joseph John Liberatore

Dated 29th day of November, 2019