

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

RUSSELL JAMES CHURCHILL BUSET ARMSTRONG
(161960)

CONSENT ORDER

RESPONDENT: Russell James Churchill Buset Armstrong, Representative Century 21
Executives Realty Ltd.

DATE OF REVIEW MEETING: November 6, 2019

DATE OF CONSENT ORDER: November 6, 2019

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

ALSO PRESENT: D. Avren, Vice President, Legal Services and Compliance
C. Davies, Legal Counsel for the Real Estate Council of BC

PROCEEDINGS:

On November 6, 2019 the Consent Order Review Committee (“CORC”) resolved to accept the Consent Order Proposal (the “Proposal”) submitted by Russell James Churchill Buset Armstrong (“Mr. Armstrong”)

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

NOW THEREFORE, having made the findings proposed in the attached Proposal, and found that Mr. Armstrong committed professional misconduct within the meaning of sections 35(1)(a) and 27(1)(a) of

the *Real Estate Services Act* ("RESA") and sections 3-2(1)(b), 5-4(b), 3-3(b) and 3-2(2)(a) of the Rules made under the RESA, pursuant to section 43 of the RESA the CORC orders that:

1. Mr. Armstrong pay a discipline penalty to the Council in the amount of \$7,500 within ninety (90) days of the date of this Order.
2. Mr. Armstrong at his 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 within the time period directed by the Council.
3. Mr. Armstrong pay enforcement expenses to Council in the amount of \$1,500 within sixty (60) days from the date of this Consent Order.

If Mr. Armstrong 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 6th day of November 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*
S.B.C. 2004, c. 42 as amended**

AND

IN THE MATTER OF

**RUSSELL JAMES CHURCHILL Buset ARMSTRONG
(161960)**

CONSENT ORDER PROPOSAL BY RUSSELL JAMES CHURCHILL Buset ARMSTRONG

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by Russell James Churchill Buset Armstrong ("Mr. Armstrong") 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, and the Council have agreed upon the following facts:

1. Mr. Armstrong (161960) has been continuously licensed as a trading representative since 2011.
2. Mr. Armstrong was at all relevant times licensed as a trading representative with Century 21 Executives Realty Ltd. (the "Brokerage"), where he remains currently licensed.
3. This matter arises from Mr. Armstrong's actions as limited dual agent respecting the purchase and sale of a property located in Armstrong, B.C. during the period March–May 2017.
4. RB and BB (the "Sellers") were the registered owners of a 125-acre property on which sat a manufactured home, located at XXXX Hullcar Road, Armstrong, B.C. (the "Property"). Mr. Armstrong had been acquainted with the Sellers on several occasions since 2011. The Sellers had listed the Property in the past between 2005 and 2016, with numerous different licensees.
5. On or about March 7, 2017, Mr. Armstrong was contacted by a family friend, MVD, who was the owner, director and president of a numbered company XXXXXX Alberta Ltd. (hereafter referred to as the "Buyer"). The Buyer had noticed a private For Sale sign on the Property and had attempted without success to contact the Sellers directly.
6. On or about March 10, 2017, Mr. Armstrong contacted the Sellers by telephone to advise them of a prospective buyer for the Property. The Sellers told Mr. Armstrong they did not wish to enter into a listing contract, but they would, however, entertain offers. Mr. Armstrong raised with them the option of entering into an exclusive listing contract if and when they received an offer they wished to accept.

7. Following his conversation with the Sellers, Mr. Armstrong spoke with the Buyer and explained the prospect of acting as a limited dual agent in the potential purchase and sale of the Property.
8. On March 13, 2017, Mr. Armstrong prepared on behalf of the Buyer an offer to purchase the Property for \$1,075,000. The Buyer signed a Working with a Realtor form (checking the “designated agency” box), and also signed a limited dual agency agreement (the “LDA Agreement”).
9. On March 14, 2017, Mr. Armstrong telephoned the Sellers and informed them of the Buyer’s offer.
10. On March 15, 2017, Mr. Armstrong attended at the Property to discuss the Buyer’s offer with the Sellers. At this meeting:
 - a. The Sellers rejected the Buyer’s offer but decided to make a counter-offer.
 - b. Mr. Armstrong prepared a counter-offer on behalf of the Sellers with a purchase price of \$1,200,000, and valid for acceptance until 5pm on March 22, 2017.
 - c. The Sellers signed the LDA Agreement and also signed a “Working with a Realtor” form (checking the “designated agency” box). They also signed an exclusive listing agreement with the Brokerage with an expiry of March 23, 2017, identifying Mr. Armstrong as the designated agent, and with a listing price for the Property of \$1,200,000.
11. Later that same day, Mr. Armstrong emailed the Seller’s counter-offer to the Buyer.
12. On March 21, 2017, the Buyer accepted and signed the counter-offer, resulting in a contract of purchase and sale of the Property (the “Contract”) with the following terms:
 - a. purchase price of \$1,200,000;
 - b. subject removal date of March 30, 2017;
 - c. deposit of \$25,000 to be paid within 48 hours of subject removal, not including weekends or statutory holidays;
 - d. closing date of June 15, 2017; and
 - e. possession date of June 16, 2017.
13. At 4:50 pm on March 22, 2017, Mr. Armstrong telephoned the Sellers to advise them that the Buyer had accepted their counter-offer.
14. At 9:00 am on March 24, 2017, Mr. Armstrong dropped off at the gate of the Property a bag containing a copy of the Contract signed by the Buyer. Mr. Armstrong has advised the Council that the Sellers did not communicate via email, and he had been instructed to leave documents for them in this manner.
15. On March 30, 2017, the Buyer removed the subjects and Mr. Armstrong attended at the Property to advise the Sellers that the subjects had been removed. Mr. Armstrong and the Sellers have differing accounts of what transpired at that meeting:

- a. Mr. Armstrong says the Sellers had cold feet about selling the Property and did not wish to proceed with the sale. He says he advised them to seek independent professional advice.
 - b. The Sellers say that they believed the sale had collapsed on the basis that the counter-offer had not been accepted in time, as they did not recall being advised by telephone by Mr. Armstrong before the 5:00 pm on March 22, 2017 that the Buyer had accepted the counteroffer. The Seller's contention is not supported by Mr. Armstrong's telephone records, which indicate that he did in fact make the telephone call within the stated deadline for acceptance.
16. After meeting with the Sellers, Mr. Armstrong advised the Buyer that the Sellers refused to complete the transaction, and he advised the Buyer to seek independent professional advice.
17. The Buyer obtained advice, and advised Mr. Armstrong of his intention to proceed with the transaction.
18. On or about April 2, 2017 (which fell on a Sunday), the Buyer delivered to Mr. Armstrong a cheque in the amount of \$25,000 representing the deposit which was due on April 3, 2017 pursuant to the terms of the Contract. That evening, Mr. Armstrong left the contract documents along with the deposit cheque on his desk in his office with the intention to submit them to the Brokerage the following morning.
19. Inexplicably, the contract documents and deposit cheque were placed in a drawer in Mr. Armstrong's desk.
20. Mr. Armstrong failed to submit the contract documents and the deposit cheque to the Brokerage on April 3, 2017, and in fact forgot about the transaction for approximately one month.
21. On April 19, 2017, the Buyer commenced civil proceedings against the Sellers in the Supreme Court of British Columbia seeking specific performance of the Contract.
22. On May 1, 2017, Mr. Armstrong discovered the contract documents and deposit cheque in his desk drawer. He immediately reported the situation to his managing broker.
23. On May 2, 2017, Mr. Armstrong deposited the deposit cheque into the Brokerage's trust account, and reported the situation to both the Sellers and the Buyer, advising each party to seek independent professional advice.
24. On May 3, 2017 Mr. Armstrong's managing broker reported the matter to the Council.
25. The transaction did not complete.
26. On January 5, 2018, the Council received a complaint from the Sellers.
27. A Notice of Discipline Hearing was issued on May 7, 2019 and served on Mr. Armstrong.

28. On or about March 29, 2018 the civil proceedings between the Buyer and the Sellers concluded and the transaction eventually completed.
29. Mr. Armstrong has no prior discipline with the Council
30. Mr. Armstrong's managing broker has advised the Council that Mr. Armstrong has always been a detailed, ethical, well-informed licensee with the Brokerage and that he regularly attended Brokerage training sessions. He says Mr. Armstrong's actions in relation to the deposit were unintentional and a mistake.

PROPOSED FINDINGS OF MISCONDUCT

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

1. Mr. Armstrong committed professional misconduct within the meaning of section 35(1)(a) of the RESA when acting as a limited dual agent for the purchase and sale of a property located at XXXX Hullcar Road in Armstrong, B.C. in 2017 in that:
 - a. he failed to promptly deliver to his managing broker and brokerage all contract documents, including the exclusive listing contract with the sellers, the contract of purchase and sale, and other corresponding documents, contrary to section 3-2(1)(b) [*provide all trading records to managing broker*] and section 5-4(b) [*deliver contract to brokerage*] of the Rules;
 - b. he failed to promptly submit the buyer's deposit into the brokerage, contrary to section 27(1)(a) [*deliver to brokerage all money held or received from a principal in relation to real estate services*] of the RESA and section 3-3(b) [*act in accordance with lawful instructions of client*] of the Rules;
 - c. he failed to keep his managing broker informed of the real estate services he was providing to the sellers and to the buyer with respect to the purchase and sale of the property, contrary to section 3-2(2)(a) of the Rules [*keep managing broker informed of real estate services being provided*].

PROPOSED ORDERS

Based on the facts herein and the Proposed Findings of Misconduct, Mr. Armstrong 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. Armstrong pay a discipline penalty to the Council in the amount of \$7,500 within ninety (90) days of the date of this Order.
2. Mr. Armstrong, at his 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 within the time period directed by the Council.

3. Mr. Armstrong pay enforcement expenses to Council in the amount of \$1,500 within sixty (60) days from the date of this Consent Order.
4. If Mr. Armstrong fails to comply with any of the terms of this Order, a Discipline Committee may suspend or cancel Mr. Armstrong's licence without further notice to him.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

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

"Russell James Churchill Buset Armstrong"

RUSSELL JAMES CHURCHILL Buset ARMSTRONG

Dated 22 day of October, 2019