

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

HARJIT SINGH HEIR
(159832)

AND

HARJIT HEIR PERSONAL REAL ESTATE CORPORATION
(159832PC)

CONSENT ORDER

RESPONDENTS:

Harjit Singh Heir, Representative, Century 21
Coast Realty Ltd., while licensed with OMAX
Realty Ltd. dba Coldwell Banker Universe
Realty

Harjit Heir Personal Real Estate Corporation

DATE OF REVIEW MEETING:

September 18, 2019

DATE OF CONSENT ORDER:

September 18, 2019

CONSENT ORDER REVIEW COMMITTEE:

E. Duvall, Chair
M. Chan
M. Walker

ALSO PRESENT:

E. Seeley, Chief Executive Officer
D. Avren, Vice President, Legal Services and
Compliance
J. Moore, Legal Counsel for the Real Estate
Council of BC

PROCEEDINGS:

On September 18, 2019, the Consent Order Review Committee ("CORC") resolved to accept the Consent Order Proposal (the "Proposal") submitted by Harjit Singh Heir, on his own behalf and on behalf of Harjit Heir Personal Real Estate Corporation.

WHEREAS the Proposal, a copy of which is attached hereto, has been executed by Harjit Singh Heir, on his own behalf and on behalf of Harjit Heir Personal Real Estate Corporation.

NOW THEREFORE, having made the findings proposed in the attached Proposal, and in particular having found that Harjit Singh Heir and Harjit Heir Personal Real Estate Corporation committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* ("RESA"), pursuant to section 43 of the RESA the CORC orders that:

1. Harjit Singh Heir and Harjit Heir Personal Real Estate Corporation jointly and severally pay a discipline penalty to the Council in the amount of \$3,500 within ninety (90) days from the date of this Order;
2. Harjit Singh Heir, at his own expense, register for and successfully complete the *Homeowner Protection Act: Protect Your Sellers and Yourself* course, offered by the Real Estate Board of Greater Vancouver in the time period as directed by the Council; and
3. Harjit Singh Heir and Harjit Heir Personal Real Estate Corporation jointly and severally pay enforcement expenses to the Council in the amount of \$1,500 within sixty (60) days from the date of this Order.

If Harjit Singh Heir and/or Harjit Heir Personal Real Estate Corporation fails 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 18th day of September 2019, at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

"Elain Duvall"

E. Duvall, Chair
Consent Order Review Committee

Attch.

**IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*
SBC 2004, c 42 as amended**

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IN THE MATTER OF

**HARJIT SINGH HEIR
(159832)**

AND

**HARJIT HEIR PERSONAL REAL ESTATE CORPORATION
(159832PC)**

**CONSENT ORDER PROPOSAL BY HARJIT SINGH HEIR
AND HARJIT HEIR PERSONAL REAL ESTATE CORPORATION**

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by Harjit Singh Heir ("Mr. Heir") and Harjit Heir Personal Real Estate Corporation ("HH PREC") to the Consent Order Review Committee ("CORA") 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. Heir on his own behalf and on behalf of HH PREC and the Council have agreed upon the following facts:

1. Mr. Heir has been licensed as a representative trading since 2010.
2. Mr. Heir became licensed as HH PREC on September 30, 2015.
3. Mr. Heir was at all relevant times licensed as a representative with OMAX Realty Ltd. dba Coldwell Banker Universe Realty.
4. On or about April 28, 2015, SB listed for sale a residential property located at XXX 139 Street, Surrey, BC (the "Property"). The Property was a new home built by an owner-builder, but this was not noted on the listing.
5. Mr. Heir represented the buyer.
6. On July 13, 2015, a contract of purchase and sale was executed between the buyer and the seller and included the following:

Subject to financing and inspection, to be removed by August 3, 2015.

The Property Disclosure Statement is incorporated into the Contract.

7. The following term in the contract was crossed out and initialed by the buyer and the seller:

Subject to the Seller providing to the Buyer a copy of the home warranty insurance policy, and the Buyers being satisfied as to this policy by _____

8. The Property Disclosure Statement ("PDS") indicated "Do Not Know" in answer to the questions on whether the home was constructed by an owner-builder and if there is home warranty insurance.
9. The BC Housing New Homes Registry (the "Registry") is an online resource that allows one to obtain information about the status of a new home or a new home under construction, in particular, whether a new home, or new home under construction, has a home warranty insurance policy; whether it was built by a licensed residential builder; and whether conditions have been met that would allow an owner-builder to sell the home. It also notes that if the home did not have home warranty insurance, it may have been built under an Owner-Builder Authorization.
10. The BC *Homeowner Protection Act* ("HPA") provides that the owner-builder or any subsequent owner of an owner-built home must:
- a. provide an Owner-Builder Disclosure Notice ("OBDN") to any potential buyer within the first 10 years after initial occupancy;
 - b. be provided to a potential purchaser prior to entering into a contract of purchase and sale and state:
 - i. that the home was built under an Owner Builder Authorization issued by the Homeowner Protection Office ("HPO");
 - ii. when the 10-year period started; and
 - iii. whether there is a voluntary policy of home warranty insurance in place.
11. The PDS also indicated that the Property contained unauthorized accommodations.
12. On or about July 17, 2015, the Council received information that the Property was an owner-built home, and according to a search of the Registry, the owner-builder had not met the requisite conditions under the HPA, and therefore was not permitted to offer the Property for sale.
13. On or about August 3, 2015, the buyer and the seller executed an addendum to the contract which removed the subject to clauses for financing and inspection, and the term incorporating the PDS into the contract.
14. On or about August 28, 2015, a Council compliance officer sent email to SB's managing broker, advising that it had come to Council's attention that the Property was being offered for sale when, according to the Registry it could not be.

15. On August 28, 2015, the purchase of the Property completed.
16. On or about August 30, 2015, SB responded to enquiries from the compliance officer and stated that he contacted the HPO and was advised that the Property was registered as an owner-built home and that an occupancy permit had been issued in 2012, but the seller was not permitted to sell the Property without an OBDN. SB was advised by the HPO officer to inform the seller that he should submit to the HPO a sub-trades list and request for an OBDN, which the seller did on August 31, 2015.
17. On or about September 30, 2015, SB, responded to enquiries from the compliance officer and stated that the seller had still not received the OBDN from the HPO.
18. On or about October 7, 2015, SB, responded to enquiries from the compliance officer and stated that the HPO had contacted him to advise that they required the buyer to contact the HPO and confirm that the buyer was aware that they were buying an owner-built home.
19. Mr. Heir in response to enquiries from the compliance officer stated that at the time he was preparing the buyer's offer, there was no indication in the listing that the Property was an owner-built home. He had included a term in the contract which stated that the seller would provide the buyer with a copy of the home warranty insurance policy. However, when the buyer was ready to remove subjects, SB had informed him that the home had been constructed by the owner and that the seller had advised him that he had misplaced the OBDN but had requested another one from the HPO.
20. The buyer and the seller agreed to cross out the home warranty clause, remove the subjects, and proceed with closing on the transaction without the OBDN.
21. Mr. Heir did not advise the buyer to seek independent professional advice about removing subject-to clauses and purchasing the Property without an OBDN and with unauthorized accommodations.
22. The buyer received the OBDN from the seller on November 16, 2015.
23. No harm resulted to the buyer, the seller or any member of the public.
24. Neither the buyer nor the seller complained to the Council.
25. Mr. Heir and HH PREC do not have a discipline history with the Council.
26. A Notice of Discipline Hearing was issued on February 8, 2019 and served on Mr. Heir on his own behalf and on behalf of and HH PREC.

PROPOSED FINDINGS OF MISCONDUCT

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

1. Mr. Heir and HH PREC committed professional misconduct within the meaning of section 35(1)(a) of the RESA, when, in Mr. Heir's capacity as the buyer's agent in the purchase of

the Property, a new home built by an owner-builder, he failed to take steps, if at all, to ascertain that the seller had complied with the provisions of the HPA, and meet the conditions for selling the Property, when:

- a. prior to the buyer making an offer on the Property, he did not ensure that the buyer had received a copy of a BC Housing OBDN from the seller, as was required by section 21(2) of the HPA, that stated whether the Property was built under an Owner-Builder Authorization and whether the Property was covered by a policy of home warranty insurance (which was not received by the buyer until three months after the transaction completed), contrary to sections 3-3(a) [act in best interest of the client], 3-3(h) [use reasonable efforts to discover relevant facts], and 3-4 [act with reasonable care and skill] of the Rules; and
 - b. he failed to advise the buyer to seek independent professional advice about:
 - i. removing a subject-to clause which stated that the PDS would not be incorporated into the contract of purchase and sale; and
 - ii. purchasing the Property:
 - A. without the OBDN; and
 - B. with unauthorized accommodations,
- contrary to section 3-3(d) of the Rules.

PROPOSED ORDERS

Based on the facts herein and the Proposed Findings of Misconduct, Mr. Heir and HH 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. Heir and HH PREC be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$3,500 within ninety (90) days from the date of this Order.
2. Mr. Heir, at his own expense, register for and successfully complete the *Homeowner Protection Act: Protect Your Sellers and Yourself* Course, offered by the Real Estate Board of Greater Vancouver, in the time period as directed by the Council.
3. Mr. Heir and HH 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 Order.
4. If Mr. Heir and HH PREC fail to comply with any of the terms of this Order, a Discipline Committee may suspend or cancel their licences without further notice to them.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. Mr. Heir and HH 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. Heir and HH 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 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.
3. Mr. Heir and HH 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. Heir and HH 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. Heir and HH PREC hereby waive their right to appeal pursuant to section 54 of the RESA.
6. The Proposal and its contents are made by Mr. Heir and HH 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. Heir and HH PREC in any civil proceeding with respect to the matter.

"HARJIT SINGH HEIR on his own behalf and on behalf of Harjit Heir Personal Real Estate Corporation"

HARJIT SINGH HEIR on his own behalf and on behalf of Harjit Heir Personal Real Estate Corporation

Dated 9th day of July, 2019