

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

KEITH SETTER
(013594)

AND

PAMELA RAYE STADNIK
(138271)

CONSENT ORDER

RESPONDENTS: Keith Setter, representative, Treeland Realty
(1992) Ltd. dba RE/MAX Treeland Realty

Pamela Raye Stadnik, representative, Treeland
Realty (1992) Ltd. dba RE/MAX Treeland Realty

DATE OF REVIEW MEETING: July 17, 2019

DATE OF CONSENT ORDER: July 17, 2019

CONSENT ORDER REVIEW COMMITTEE: Y. Amlani (Chair)
R. Hanson
L. Allen

ALSO PRESENT: E. Duvall
E. Seeley, Executive Officer
C. McLaughlin, Manager, Legal Services
K. Mactaggart Wright, Legal Counsel for the
Real Estate Council
K. Murray, Legal Counsel for the Respondents

PROCEEDINGS:

On July 17, 2019, the Consent Order Review Committee (“CORC”) resolved to accept the Consent Order Proposal (the “Proposal”) submitted by Keith Setter and Pamela Raye Stadnik.

WHEREAS the Proposal, a copy of which is attached hereto, has been executed by Keith Setter and Pamela Raye Stadnik.

NOW THEREFORE, having made the findings proposed in the attached Proposal, and found that Keith Setter and Pamela Raye Stadnik 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. Keith Setter pay a discipline penalty to the Council in the amount of \$3,000 within ninety (90) days from the date of this Order;
2. Pamela Raye Stadnik pay a discipline penalty to the Council in the amount of \$4,500 within ninety (90) days from the date of this Order;
3. Keith Setter and Pamela Raye Stadnik, at their own expense, each register for and successfully complete the Real Estate Trading Services Remedial Education Course, as provided by Sauder School of Business at the University of British Columbia in the time period as directed by the Council; and
4. Keith Setter and Pamela Raye Stadnik be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,500 within sixty (60) days from the date of this Order.

If Keith Setter or Pamela Raye Stadnik 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 17th day of July, 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**

IN THE MATTER OF

**KEITH SETTER
(013594)**

AND

**PAMELA RAYE STADNIK
(138271)**

CONSENT ORDER PROPOSAL BY KEITH SETTER AND PAMELA RAYE STADNIK

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by Keith Setter ("Mr. Setter") and Pamela Raye Stadnik ("Ms. Stadnik") 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. Setter, Ms. Stadnik, and the Council have agreed upon the following facts:

1. Mr. Setter (013594) has been licensed as a representative for trading services and for rental property management services since 1982. He became licensed for trading services alone in 2017.
2. Mr. Setter was at all relevant times licensed as a representative for trading services with Treeland Realty (1992) Ltd. dba RE/MAX Treeland Realty (the "Brokerage").
3. Ms. Stadnik (138271) has been licensed as a representative for trading services since 2003.
4. Ms. Stadnik was at all relevant times licensed as a representative for trading services, also with the Brokerage.
5. This matter arises out of a 2014 complaint to the Council from the buyers (the "Buyers") of a property located on 39A Avenue in the Township of Langley (the "Township"), British Columbia (the "Property").
6. Mr. Setter and Ms. Stadnik worked together around 2013, but were not registered with the Council as a team.
7. On June 1, 2013, Mr. Setter signed a Working With A Realtor (Designated Agency) form, together with the Buyers setting out a client relationship.

8. Mr. Setter was the Buyers' primary contact for the sale of their own home, and Ms. Stadnik was the Buyers' primary contact for the purchase of the Property. However, Mr. Setter remained involved with the Buyers' during the purchase of the Property and did not revise his relationship with them.
9. The Buyers made an offer for the Property in a Contract of Purchase and Sale dated October 21, 2013 (the "Contract"). The Contract was accepted by the seller (the "Seller") on the same day or one day later. The Contract contained a completion date of November 13, 2013, a negotiated price of \$690,000, and among other things, was made subject to a home inspection and a title search. The Contract sets out that Ms. Stadnik was the designated agent for the Buyers.
10. The Property was attractive to the Buyers for reasons including that the home on it appeared to be as marketed, "...*completely updated and modernized...*". The Buyers had difficulty finding a home they liked in their price range, and had borrowed additional funds from family to allow them to consider purchasing the Property.
11. Prior to the completion date for the transaction, and prior to the removal of subject conditions for the Contract, the Buyers discovered a previous listing for the Property, at a significantly lower price, that set out the home on the Property required substantial foundation repair, a new roof and interior renovation (the "Previous Listing"). The Buyers brought the Previous Listing to the attention of Mr. Setter, which he shared with Ms. Stadnik. Ms. Stadnik says she asked the home inspector to look for structural issues on the Property.
12. On or about October 28, 2013, the Buyers had a home inspection for the Property carried out. That home inspection did not note any concerns with respect to the structure of the home but did note that the detached garage slab had sunken considerably, and had a cracked slab, warped framing and structure and overhead door displaced 4 inches. The inspector also noted there was no access to the crawl space to inspect the foundation. The inspector recommended evaluation by a structural engineer.
13. Ms. Stadnik asked an agent for the Seller about the Bylaw Contravention Notice on the title for the Property, and received disclosure by email, on October 24, 2013 or after the Contract was accepted, that a required municipal permit for a covered deck on the Property, was not obtained. Mr. Setter also reviewed the title search for the Property.
14. On October 29, 2013, the Buyer and the Seller agreed to an Addendum to the Contract that provided for a \$20,000 hold-back for the Seller to obtain the required municipal permit for the covered deck, and to make repairs identified in the home inspection report.
15. The Previous Listing, the home inspection of the Property, and the title for the Property each offered Mr. Setter and Ms. Stadnik the opportunity to adequately investigate whether the Seller carried out renovations in 2013 with the appropriate municipal permits, and whether the substantial foundation repair needed to the home on the Property was made.
16. However, Ms. Stadnik and Mr. Setter relied on verbal assurance from the Seller's agents that the required repair was made, and appropriate permits obtained. Neither Ms. Stadnik nor Mr. Setter asked for, or investigated themselves, copies of the required permits despite knowing the apparently renovated condition of the Property was important to the Buyers, and the Buyers were concerned about past descriptions of the Property as requiring structural repair.

17. After the sale of the Property completed, the Buyers experienced challenges with the home on the Property. The Buyers followed up with the Township and discovered:
 - a. In the summer of 2013, the Property was subject to Bylaw Notice Enforcement Tickets for construction without a required permit; and
 - b. In 1993, the Township passed a resolution relating to the subsiding foundations on the Property as follows: *“That the dwelling constructed on the property [...] is in contravention of the Building Bylaw in that it has been constructed on unsupervised fill material, and as a result of that condition is unlikely to be usable for its expected purpose during its normal lifetime [...]”*
18. In 2014, the Buyers commenced civil litigation in respect of the Seller, Mr. Setter and Ms. Stadnik, and others. The Council was informed that the litigation was resolved confidentially in about 2017.
19. Ms. Stadnik earned a commission of about \$9,830 as the Buyer’s agent.
20. A Notice of Discipline Hearing was issued on February 20, 2018, and served on Mr. Setter.
21. A Notice of Discipline Hearing was issued on February 20, 2018, and served on Ms. Stadnik.
22. Neither Mr. Setter nor Ms. Stadnik has a discipline history with the Council.

PROPOSED FINDINGS OF MISCONDUCT

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

1. Mr. Setter committed professional misconduct within the meaning of section 35(1)(a) of the RESA while acting as the agent for the buyers (the “Buyers”) of a property located on 39A Avenue (the “Property”) in the Township of Langley (the “Township”) in 2013, in that he failed to:
 - a. investigate sufficiently, or at all, the condition of the Property and recent renovations and repair, when he knew or ought to have known work had recently been done to the Property, and the renovated condition was important to his clients, the Buyers;
 - b. investigate or confirm whether work had been done on the Property with municipal permits, when he knew or should have known that was a potential issue as a covered porch had been completed without a permit;
 - c. make reasonable enquiries about the legal notation on the Property’s title regarding a Bylaw Contravention Notice, or other charges, liens and interests;and, in that he:
 - d. relied on verbal assurances from the Seller’s agents about repairs to the Property and the Bylaw charge on the title, alone,

all contrary to sections 3-3(a) and (h), and 3-4 of the Council Rules, then in effect (the “Rules”).

2. Ms. Stadnik committed professional misconduct within the meaning of section 35(1)(a) of the RESA while acting as the agent for the buyers (the “Buyers”) of a property located on 39A Avenue (the “Property”) in the Township of Langley (the “Township”) in 2013, in that she failed to:
 - a. investigate sufficiently, or at all, the condition of the Property and recent renovations and repair, when she knew or ought to have known work had recently been done to the Property, and the renovated condition was important to her clients, the Buyers;
 - b. investigate or confirm whether work had been done on the Property with municipal permits, when she knew or should have known that was a potential issue as a covered porch had been completed without a permit;
 - c. make reasonable enquiries about the legal notation on the Property’s title regarding a Bylaw Contravention Notice, or other charges, liens and interests;and, in that she:
 - d. relied on verbal assurances from the Seller’s agents about repairs to the Property and the Bylaw charge on the title, alone;

all contrary to sections 3-3(a) and (h), and 3-4 of the Rules.

PROPOSED ORDERS

Based on the Facts herein and the Proposed Findings of Misconduct, Mr. Setter and Ms. Stadnik 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. Setter pay a discipline penalty to the Council in the amount of \$3,000 within ninety (90) days of the date of this Order.
2. Ms. Stadnik pay a discipline penalty to the Council in the amount of \$4,500 within ninety (90) days of the date of this Order.
3. Mr. Setter and Ms. Stadnik, at their own expense, each 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 in the time period as directed by the Council.
4. Mr. Setter and Ms. Stadnik jointly and severally pay enforcement expenses to Council in the amount of \$1,500 within sixty (60) days from the date of this Consent Order.
5. If Mr. Setter or Ms. Stadnik fails to comply with any of the terms of this Order, a Discipline Committee may suspend or cancel Mr. Setter or Ms. Stadnik’s licence without further notice to Mr. Setter or Ms. Stadnik.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

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

“Keith Setter”

KEITH SETTER

Dated 4th day of July, 2019

“Pamela Raye Stadnik”

PAMELA RAYE STADNIK

Dated 4th day of July, 2019