

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  
NEIL ALBERT BARNES  
(058992)

CONSENT ORDER

RESPONDENT: Neil Albert Barnes, representative, West Coast Realty Ltd. dba Sutton Group-West Coast 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  
M. Sull, Legal Counsel for the  
Real Estate Council

PROCEEDINGS:

On July 17, 2019, the Consent Order Review Committee ("CORC") resolved to accept the Consent Order Proposal (the "Proposal") submitted by Neil Albert Barnes.

**WHEREAS** the Proposal, a copy of which is attached hereto, has been executed by Neil Albert Barnes.

**NOW THEREFORE**, having made the findings proposed in the attached Proposal, and found that Neil Albert Barnes 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. Neil Albert Barnes have his licence suspended for fourteen (14) days;

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2. Neil Albert Barnes will not act as an unlicensed assistant during the time of his licence suspension;
  3. Neil Albert Barnes pay a discipline penalty to the Council in the amount of \$2,500 within ninety (90) days from the date of this Order;
  4. Neil Albert Barnes pay enforcement expenses to the Council in the amount of \$1,500 within sixty (60) days from the date of this Order.

If Neil Albert Barnes 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 17<sup>th</sup> day of July, 2019, at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

“Yasin Amlani”

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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**

**NEIL ALBERT BARNES  
(058992)**

**CONSENT ORDER PROPOSAL BY NEIL ALBERT BARNES**

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**BACKGROUND AND FACTS**

This Consent Order Proposal (the "Proposal") is made by Neil Albert Barnes 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. Barnes and the Council have agreed upon the following facts:

1. Mr. Barnes has been licensed as a real estate trading and rental representative since 1986 and his licensing history has been continuous except for short periods of time in 1990, 1992 and 2008.
2. Mr. Barnes was at all relevant times licensed as a representative with West Coast Realty Ltd. ("West Coast").
3. At all relevant times, Mr. Barnes was acting as the listing agent for the seller of a property (the "Seller") located at XXXXX Oxford Street, Port Coquitlam, BC (the "Property").
4. The Seller entered into a Multiple Listing Contract with West Coast and its designated agent, Mr. Barnes, for the sale of the Property on May 20, 2015. Pursuant to the Multiple Listing Contract, the Property would be listed for \$309,900 and the Seller agreed to pay the listing brokerage 7% on \$100,000 and 2.5% on the balance.
5. On June 5, 2015, the Seller entered into a Contract of Purchase and Sale for the Property for \$304,000. The Contract of Purchase and Sale only listed Mr. Barnes as the listing agent.
6. The transaction was completed on July 29, 2015.
7. At some point between the time the Multiple Listing Contract and the Contract of Purchase and Sale were executed, the Seller agreed to reduce the price of the Property and Mr. Barnes agreed to pay half of his commission to the Seller.
8. Mr. Barnes also asked his colleague AA to assist him the sale of the Property; however, the Multiple Listing Contract was not amended to include AA.

9. Based on the Multiple Listing Agreement, a commission of \$6,478.50 was paid to the listing brokerage. Half of this commission was paid to Mr. Barnes and the other half was paid to AA.
10. The Seller's understanding was that she would receive \$3,000 of the total commission paid to the listing brokerage.
11. Mr. Barnes says that he only intended to pay the Seller half of his portion of the commission, which was \$1,500.
12. During and after the transaction, the Seller and Mr. Barnes exchanged a number of text messages about the amount owing to the Seller.
13. Beginning in November 2015, Mr. Barnes began sending the Seller payment in installments and paid her a total of \$1,500.
14. On April 10, 2016 Mr. Barnes sent the Seller an email indicating he had now paid her the full amount she was owed and that he had only agreed to pay his half of the commission.
15. A Notice of Disciplinary Hearing was issued on May 28, 2018 and served on Mr. Barnes.
16. Mr. Barnes 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. Barnes proposes the following findings of misconduct be made by the CORC:

Mr. Barnes committed professional misconduct within the meaning of section 35(1)(a) of the RESA in that while acting as the agent for the Seller in the sale of the Property:

- i. he failed to act in the best interests of his client when he agreed to repay a percentage of his commission to the Seller but failed to do so promptly, contrary to sections 3-3(a) of the Rules; and
- ii. he failed to disclose to his client all known material information when he failed to ensure the Seller knew that another licensee would be acting as a designated agent and receiving half of the commission from the sale of the Property, contrary to section 3-3(f) of the Rules.

#### **PROPOSED ORDERS**

Based on the Facts herein and the Proposed Findings of Misconduct, Mr. Barnes 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. Barnes' licence be suspended for fourteen (14) days.
2. Mr. Barnes be prohibited from acting as an unlicensed assistant during his licence suspension period.

3. Mr. Barnes be liable to pay a discipline penalty to the Council in the amount of \$2,500 within ninety (90) days of the date of this Order.
4. Mr. Barnes be liable to pay enforcement expenses in the amount of \$1,500 within sixty (60) days from the date of this Consent Order.
5. If Mr. Barnes fails to comply with any of the terms of this Order, the Council may suspend or cancel Mr. Barnes' license without further notice to him.

#### **ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT**

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

"Neil Albert Barnes"

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**Neil Albert Barnes**

**Dated 28<sup>th</sup> day of May, 2019**