

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
SUNVEER (SUNNY) BALL
(167959)

CONSENT ORDER

RESPONDENT: Sunveer (Sunny) Ball, representative, West Coast Realty Ltd. dba Sutton Group – West Coast Realty, while licensed with Team 3000 Realty Ltd. (Surrey)

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
J. Moore, 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 Sunveer (Sunny) Ball.

WHEREAS the Proposal, a copy of which is attached hereto, has been executed by Sunveer (Sunny) Ball.

NOW THEREFORE, having made the findings proposed in the attached Proposal, and found that Sunveer (Sunny) Ball 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:

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

If Sunveer (Sunny) Ball 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 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**

AND

IN THE MATTER OF

**SUNVEER (SUNNY) BALL
(167959)**

CONSENT ORDER PROPOSAL BY SUNVEER (SUNNY) BALL

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by Sunveer (Sunny) Ball ("Mr. Ball") 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. Ball and the Council have agreed upon the following facts:

1. Mr. Ball has been licensed as a representative trading since 2014.
2. Mr. Ball was at all relevant times licensed with Team 3000 Realty Ltd. (Surrey).
3. On or about April 28, 2015, Mr. Ball listed for sale a residential property located at XXXX 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.
4. Harjit Heir ("Mr. Heir") represented the buyer.
5. 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.

6. 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 _____

7. 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.

8. 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.
9. 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.
10. 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.
11. 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.
12. On or about August 28, 2015, a Council compliance officer sent an email to Mr. Ball'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.
13. On August 28, 2015, the sale of the Property completed.
14. On or about August 30, 2015, Mr. Ball responded to enquiries from the compliance officer and stated that he had 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. Mr. Ball 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.
15. On or about September 30, 2015, Mr. Ball, responded to enquiries from the compliance officer and stated that the seller had still not received the OBDN from the HPO.

16. On or about October 7, 2015, Mr. Ball 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.
17. 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, Mr. Ball 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.
18. 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.
19. Mr. Ball did not advise the seller to seek independent professional advice with respect to his obligations under the HPA, and the conditions that must be met for selling the Property.
20. The buyer received the OBDN from the seller on November 16, 2015.
21. No harm resulted to the buyer, the seller or any member of the public.
22. Neither the buyer nor the seller complained to the Council.
23. Mr. Ball does not have a discipline history with the Council.
24. A Notice of Discipline Hearing was issued on February 8, 2019 and served on Mr. Ball.

PROPOSED FINDINGS OF MISCONDUCT

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

1. Mr. Ball committed professional misconduct within the meaning of section 35(1)(a) of the RESA, when, in his capacity as the listing agent for the 2015 sale of the Property, a new home built by an owner-builder, he failed to establish that the seller had complied with the provisions of the HPA, when:
 - a. prior to listing the Property, he did not confirm that the seller had obtained a BC Housing OBDN 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;
 - b. prior to an offer being made for the Property, he did not ensure that the seller had, as they were required to do under section 21(2) of the HPA, provided the buyer with the OBDN, (which was not provided to the buyer until three months after the transaction completed); and

- c. he did not make inquiries of the seller (or elsewhere), when the seller answered “Do not know” to questions on the PDS about whether the Property was owner-built and whether there was a policy of home warranty,

contrary to sections 3-3(a) [act in best interest of the client] and 3-4 [act with reasonable care and skill] of the Rules; and
- d. he failed to advise the seller to seek independent professional advice with respect to his obligations under the HPA, and the conditions that must be met for selling the Property, contrary to section 3-3(d) of the Rules.

PROPOSED ORDERS

Based on the facts herein and the Proposed Findings of Misconduct, Mr. Ball 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. Ball be reprimanded.
2. Mr. Ball pay a discipline penalty to the Council in the amount of \$3,500 within ninety (90) days from the date of this Order.
3. Mr. Ball, 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.
4. Mr. Ball pay enforcement expenses to Council in the amount of \$1,500 within sixty (60) days from the date of this Order.
5. If Mr. Ball fails to comply with any of the terms of this Order, a Discipline Committee may suspend or cancel Mr. Ball’s licence without further notice to him.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

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

“Sunveer (Sunny) Ball”

SUNVEER (SUNNY) BALL

Dated 25th day of June, 2019