

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

CARMELITA POGADO TESTAWICH
(138930)

AND

CARMELITA OBRADOVIC PERSONAL REAL ESTATE CORPORATION
(138930PC)

CONSENT ORDER

RESPONDENT: Carmelita Pogado Testwich, Representative,
Statesman Realty Corporation dba Sage
Executive Group Real Estate

Carmelita Obradovic Personal Real Estate
Corporation

DATE OF REVIEW MEETING: May 29, 2019

DATE OF CONSENT ORDER: May 29, 2019

CONSENT ORDER REVIEW COMMITTEE: Sandra Heath
Yasin Amlani
Magdaline (Maggie) Chan

ALSO PRESENT: D. Avren, Director, Legal Services
J. Whittow, QC, Legal Counsel for
the Real Estate Council

PROCEEDINGS:

On May 29, 2019, the Consent Order Review Committee (“CORC”) resolved to accept the Consent Order Proposal (the “Proposal”) submitted by Carmelita Pogado Testawich, on her own behalf and on behalf of Carmelita Obradovic Personal Real Estate Corporation.

WHEREAS the Proposal, a copy of which is attached hereto, has been executed by Carmelita Pogado Testawich, on her own behalf and on behalf of Carmelita Obradovic Personal Real Estate Corporation.

NOW THEREFORE, the CORC having made the findings proposed in the attached Proposal, and found that Carmelita Pogado Testawich and Carmelita Obradovic Personal Real Estate Corporation committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*, orders that:

1. Carmelita Pogado Testawich and Carmelita Obradovic Personal Real Estate Corporation each be reprimanded;
2. Carmelita Pogado Testawich and Carmelita Obradovic Personal Real Estate Corporation be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$3,500 within ninety (90) days of the date of this Consent Order;
3. Carmelita Pogado Testawich, at her own expense, 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. Carmelita Pogado Testawich and Carmelita Obradovic Personal Real Estate Corporation 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 Consent Order.

If Carmelita Pogado Testawich and Carmelita Obradovic Personal Real Estate Corporation fail 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 *Real Estate Services Act*.

Dated this 29th day of May, 2019 at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

“S. Heath”

Sandra Heath
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

CARMELITA POGADO TESTAWICH (138930)

CARMELITA OBRADOVIC PERSONAL REAL ESTATE CORPORATION (138930PC)

**CONSENT ORDER PROPOSAL BY CARMELITA POGADO TESTAWICH and
CARMELITA OBRADOVIC PERSONAL REAL ESTATE CORPORATION**

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by Carmelita Pogado Testawich and Carmelita Obradovic Personal Real Estate Corporation ("Ms. Testawich and Obradovic PREC") 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, Ms. Testawich and Obradovic PREC and the Council have agreed upon the following facts:

1. Ms. Testawich has been licensed as a representative for trading services since 2004.
2. Ms. Testawich was licensed as a representative with Statesman Realty Corporation dba Sage Executive Group Real Estate (the "Brokerage") since 2008.
3. Ms. Testawich became licensed as Carmelita Obradovic Personal Real Estate Corporation on December 22, 2016.
4. On June 20, 2017, Ms. Testawich prepared a contract on behalf of a buyer to purchase property located at XXXX-42 Avenue, Vernon, at a price of \$400,000, to close August 30, 2017, which was accepted by the seller (the "Contract"). The Contract called for a deposit of \$5,000, to be paid within 2 working days of acceptance, that is, by June 23, 2017.
5. Ms. Testawich submitted the Contract to the Brokerage.
6. The deposit was not paid on June 23, 2017 or at all.

7. On July 3, 2017, Ms. Testawich prepared and sent the seller's agent a General Release Form, which provided that the Contract would be cancelled without forfeit of a deposit. She advised the seller's agent that the buyers had changed their mind about the property and asked that the sellers sign the Release. July 3rd was the first date that Ms. Testawich informed the seller's agent that the deposit had not been paid.
8. Also on July 3, 2017, Ms. Testawich informed her managing broker that the deposit had not been received in accordance with the Contract.
9. On July 11, 2017, the seller made a complaint to the Council.
10. Ms. Testawich explained to the Council that she had forgotten to collect the deposit.
11. A Notice of Disciplinary Hearing was issued on January 10, 2019 and served on Ms. Testawich and Obradovic PREC.
12. Ms. Testawich and Obradovic PREC have no prior discipline history by the Council.

PROPOSED FINDINGS OF MISCONDUCT

For the sole purposes of the Proposal and based on the Facts outlined herein, Ms. Testawich and Obradovic PREC proposes the following findings of misconduct be made by the CORC:

1. Ms. Testawich and Obradovic PREC committed professional misconduct within the meaning of section 35(1)(a) of RESA and section 3-4 of the Rules, in that, in or about June 2017, when acting as the agent for the buyer in the purchase of property:
 - a. Ms. Testawich failed to notify the representative of the seller, in a timely way, that the deposit had not been received, contrary to section 3-4 of the Rules, and
 - b. Ms. Testawich failed to immediately notify her managing broker that a deposit had not been received in accordance with the Contract, contrary to section 3-2(2)(b) of the Rules.

PROPOSED ORDERS

Based on the Facts herein and the Proposed Findings of Misconduct, Ms. Testawich and Obradovic PREC 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. Ms. Testawich and Obradovic PREC each be reprimanded.
2. Ms. Testawich and Obradovic PREC be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$3,500.00 within ninety (90) days of the date of this Consent Order.

3. Ms. Testawich at her own expense, register for and successfully complete the 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.
4. Ms. Testawich and Obradovic PREC be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,500.00 within sixty (60) days from the date of this Consent Order.
5. If Ms. Testawich and Obradovic PREC fail to comply with any of the terms of this Order, a Discipline Committee may suspend or cancel Ms. Testawich and Obradovic PREC's licence without further notice to Ms. Testawich and Obradovic PREC.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. Ms. Testawich and Obradovic 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. Ms. Testawich and Obradovic 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 have obtained independent legal advice or 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. Ms. Testawich and Obradovic 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. Ms. Testawich and Obradovic 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. Ms. Testawich and Obradovic PREC hereby waive their right to appeal pursuant to section 54 of the RESA.

6. The Proposal and its contents are made by Ms. Testawich and Obradovic 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 Ms. Testawich and Obradovic PREC in any civil proceeding with respect to the matter.

"C. P. Testawich"

Carmelita Pogado Testawich

Dated_7th_, day of _March__, 2019

Carmelita Obradovic Personal Real Estate
Corporation

Per: "C. P. Testawich"

**Carmelita Pogado Testawich, Authorized
Signatory**

Dated_7th_, day of _March__, 2019