

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
LARRIE ANDREW FORBES
(078013)

CONSENT ORDER

RESPONDENT: Larrie Andrew Forbes, Representative,
All Points Realty Group Ltd.
dba RE/MAX All Points Realty

DATE OF REVIEW MEETING: April 3, 2019

DATE OF CONSENT ORDER: April 3, 2019

CONSENT ORDER REVIEW COMMITTEE: E. Mignosa (Chair)
E. Duvall
R. Hanson
N. Nicholson

ALSO PRESENT: E. Seeley, Executive Officer
D. Avren, Director, Legal Services
C. Davies, Legal Counsel for the Real Estate
Council

PROCEEDINGS:

On April 3, 2019, the Consent Order Review Committee (the "Committee") resolved to accept the Consent Order Proposal (the "Proposal") submitted by Larrie Andrew Forbes.

WHEREAS the Proposal, a copy of which is attached hereto, has been executed by Larrie Andrew Forbes.

NOW THEREFORE, the Committee having made the findings proposed in the attached Proposal, and in particular having found that Larrie Andrew Forbes committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*, orders that:

1. Larrie Andrew Forbes be reprimanded;

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2. Larrie Andrew Forbes pay a discipline penalty to the Council in the amount of \$7,500 within ninety (90) days from the date of this Order;
 3. Larrie Andrew Forbes, at his 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. Larrie Andrew Forbes pay enforcement expenses to the Council in the amount of \$1,500 within sixty (60) days from the date of this Order.

If Larrie Andrew Forbes 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 *Real Estate Services Act*.

Dated this 3rd day of April, 2019, at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

“Elana Mignosa”

Elana Mignosa
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

**LARRIE ANDREW FORBES
(078013)**

CONSENT ORDER PROPOSAL BY LARRIE ANDREW FORBES

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by Larrie Andrew Forbes ("Mr. Forbes") 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 Service Act* ("RESA").

For the purposes of the Proposal, Mr. Forbes and the Council have agreed upon the following facts:

1. Mr. Forbes (078013) has been licensed as a representative since 1989.
2. Mr. Forbes was at all relevant times licensed as a representative with All Points Realty Group Ltd.
3. This matter arises from Mr. Forbes' role as buyer's agent for the complainant in the purchase and sale of a strata property in a development known as Forest Hills located at Foxwood Drive, Port Moody, BC (the "Property").

Forest Hills roof replacement project

4. Forest Hills is a town-home development originally built in 1994. The owners determined as early as 2013 that the roof at Forest Hills needed replacement and that this would take place in or around 2018.
5. The plans for a roof replacement were discussed and referred to from time to time at strata council meetings and AGMs in 2014-2016.
6. At a strata council meeting held on February 29, 2016, the strata council developed a timeline for the roof replacement as follows:
 - a. retain a roofing consultant to develop a scope of work to send to tender;
 - b. review the tenders;
 - c. decide on a contractor to recommend to the strata owners;
 - d. present a resolution to the strata owners by November 2016.

7. At a strata council meeting held on June 6, 2016, the quotes from three potential roof consultants were discussed.
8. At a strata council meeting held on August 29, 2016, the strata council decided to retain XXXX Roof Inspections as the consultant for the project.
9. At a strata council meeting on October 12, 2016, the strata council reviewed tenders presented by the roof project consultant.
10. On or about November 22, 2016, the strata council finalized the details of the roof replacement that would be put forth for approval by the strata owners by way of resolution, including that the roof replacement would be funded by a combination of a contribution from the strata contingency reserve fund as well as a special assessment.

Complainant's purchase of the Property

11. The Property was listed for sale effective July 11, 2016.
12. On the listing feature sheet prepared by the listing agent, there was a link to a dropbox containing a number of strata documents, including strata council meeting minutes and AGM minutes for the time-frame January 2014 through to April 2016.
13. On September 8, 2016, the complainant viewed the Property. On or around that same day, Mr. Forbes provided the complainant with hard copies of the following strata documents:
 - a. September 2013 Depreciation Report;
 - b. November 10, 2014 AGM minutes;
 - c. November 23, 2015 AGM minutes;
 - d. January 4, 2016 strata council meeting minutes;
 - e. February 29, 2016 strata council meeting minutes;
 - f. April 18, 2016 strata council meeting minutes;
 - g. February 2016 Financial Statement.

Mr. Forbes did not review or discuss the documents with the complainant. The documents referred to in (a), (b), (c), (e) and (f) above all contained references to the roof replacement project.

14. In addition, Mr. Forbes did not obtain, review or discuss with the complainant the documents available in the listing's linked dropbox.
15. On September 8, 2016, the complainant made an offer to purchase the Property for a purchase price of \$480,000. The offer was subject to a number of conditions (including the sale of the buyer's property, property disclosure statement, title search, insurance approval, inspection, and strata documents). The seller rejected this offer.
16. On September 15, 2016, the complainant made another offer to purchase the Property. This offer was subject-free and had a purchase price of \$490,000. The seller rejected this

offer, and made a counter offer at a purchase price of \$520,000. This was accepted by the complainant on September 17, 2016, forming the basis for the Contract of Purchase and Sale (the "Contract").

17. The Contract contained the following terms: purchase price of \$520,000, deposit of \$25,000 payable within 24 hours of acceptance; completion date of November 28, 2016, and possession date of December 1, 2016. The Contract was subject-free.
18. Mr. Forbes failed to advise the complainant to seek independent professional advice regarding entering into a subject-free contract of purchase and sale, and in fact he recommended that she make a subject-free offer.
19. The transaction completed and the complainant obtained possession of the Property on December 1, 2016.
20. In or about the first week of December 2016, the complainant received by mail a welcome package from the strata council ("Welcome Package"). The Welcome Package contained, among other things, a letter from the strata council manager to the strata owners dated November 25, 2016 setting out details of the roof replacement project and a resolution to be voted on at the AGM scheduled for December 15, 2016.
21. On December 15, 2016, the AGM took place. The owners of the strata voted on a number of resolutions pertaining to the roof replacement, and approved a resolution to fund the roof replacement by way of combination of a contribution from the contingency reserve fund as well as a special assessment. The special assessment was in the amount of \$1,173,325.08 payable by strata owners either in monthly installments January – June 2017 or by lump sum due March 1, 2017.
22. As owner of the Property, the complainant's portion of the special assessment was calculated in the amount of \$17,402.56.
23. Until she received the Welcome Package, the complainant was unaware of the roof replacement project, and unaware of the special assessment (or the possibility of a special assessment) pertaining to the roof replacement.
24. A Notice of Discipline Hearing was issued on January 16, 2019 and served on Mr. Forbes.
25. Mr. Forbes has discipline history with the Council as follows:
 - a. Mr. Forbes entered into a previous Consent Order with the Council dated June 17, 2010 and admitted to professional misconduct within the meaning of section 35(1) of RESA.
 - b. Specifically, Mr. Forbes admitted that in contravention of sections 3-2(2) and 3-4 of the Rules, he failed to immediately notify his managing broker that the deposit required under a contract of purchase and sale was not received as required by the contract, and he allowed his buyers to remove the subjects to the contract

indicating that the deposit required had been provided when it had not in fact been provided.

- c. Mr. Forbes's penalty included a seven-day suspension, completion of the Trading Services Remedial Education Course, and payment of enforcement expenses.

PROPOSED FINDINGS OF MISCONDUCT

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

1. Mr. Forbes committed professional misconduct within the meaning of section 35(1)(a) of the RESA in that when acting as buyer's agent in the purchase and sale of a strata property located at Foxwood Drive, Port Moody B.C. in September 2016, he:
 - a. failed to obtain, review, and provide to his client a complete set of strata documents prior to preparing a subject-free offer to purchase the property, contrary to section 3-3(a) [*best interests of the client*] and section 3-4 [*reasonable care and skill*] of the Rules;
 - b. failed to make inquiries into the strata's roof replacement project prior to preparing a subject-free offer, contrary to section 3-3(a) [*best interests of the client*], section 3-3(h) [*reasonable efforts to discover facts respecting real estate*] and section 3-4 [*reasonable care and skill*] of the Rules;
 - c. failed to advise his client to seek independent professional advice prior to preparing a subject-free offer, contrary to section 3-3(d) [*independent professional advice*] of the Rules; and
 - d. failed to insert into his client's subject-free offer a hold-back clause respecting a possible special assessment arising from the strata's roof replacement project, contrary to section 3-3(a) [*best interests of the client*] and section 3-4 [*reasonable care and skill*] of the Rules.

PROPOSED ORDERS

Based on the facts herein and the Proposed Findings of Misconduct, Mr. Forbes 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. Forbes be reprimanded.
2. Mr. Forbes pay a discipline penalty to the Council in the amount of \$7,500 within ninety (90) days of the date of this Order.
3. Mr. Forbes, at his own expense, register for and successfully complete the Trading Services Remedial Education Course as provided by the Real Estate Division, Sauder School of Business at the University of British Columbia within the time period directed by the Council.

4. Mr. Forbes 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. Forbes fails to comply with any of the terms of this Order, a Discipline Committee may suspend or cancel Mr. Forbes's licence without further notice to him.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. Mr. Forbes 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. Forbes 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 they are making the Proposal with full knowledge of the contents and the consequences if the Proposal is accepted.
3. Mr. Forbes 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. Forbes 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. Forbes hereby waives his right to appeal pursuant to section 54 of the RESA.
6. The Proposal and its contents are made by Mr. Forbes 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. Forbes in any civil proceeding with respect to the matter.

"Larrie Andrew Forbes"

LARRIE ANDREW FORBES

Dated 28th day of January, 2019