

**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**

**LITTLE OAK REALTY LTD. DBA**  
**RE/MAX LITTLE OAK REALTY**  
**(X001878)**

**AND**

**DAVID JAMES RISHEL**  
**(057926)**

**CONSENT ORDER**

RESPONDENT: David James Rishel, Managing Broker, Little Oak Realty Ltd. dba RE/MAX Little Oak Realty

Little Oak Realty Ltd. dba RE/MAX Little Oak Realty

DATE OF REVIEW MEETING: February 27, 2019

DATE OF CONSENT ORDER: February 27, 2019

CONSENT ORDER REVIEW COMMITTEE: E. Mignosa  
B. Chisholm  
L. Hrycan  
D. Peerless

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

**PROCEEDINGS:**

On February 27, 2019, the Consent Order Review Committee (the "Committee") resolved to accept the Consent Order Proposal (the "Proposal") submitted by David James Rishel, on his own behalf and on behalf of Little Oak Realty Ltd. dba RE/MAX Little Oak Realty.

---

**WHEREAS** the Proposal, a copy of which is attached hereto, has been executed by David James Rishel, on his own behalf and on behalf of Little Oak Realty Ltd. dba RE/MAX Little Oak Realty.

**NOW THEREFORE**, the Committee having made the findings proposed in the attached Proposal, and in particular having found that David James Rishel and Little Oak Realty Ltd. dba RE/MAX Little Oak Realty committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*, orders that:

1. David James Rishel pay a discipline penalty to the Council in the amount of \$7,500 within ninety (90) days from the date of this Order;
2. David James Rishel, at his own expense, register for and successfully complete the Broker's 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;
3. Little Oak Realty Ltd. dba RE/MAX Little Oak Realty pay a discipline penalty to the Council in the amount of \$7,500 within ninety (90) days from the date of this Order; and
4. David James Rishel and Little Oak Realty Ltd. dba RE/MAX Little Oak Realty 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 David James Rishel or Little Oak Realty Ltd. dba RE/MAX Little Oak Realty 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 *Real Estate Services Act*.

Dated this 27<sup>th</sup> day of February, 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*  
S.B.C. 2004, c. 42 as amended**

**AND**

**IN THE MATTER OF**

**LITTLE OAK REALTY LTD. DBA RE/MAX LITTLE OAK REALTY  
(X001878)**

**AND**

**DAVID JAMES RISHEL  
(057926)**

**CONSENT ORDER PROPOSAL**

---

**BACKGROUND AND FACTS**

This Consent Order Proposal (the "Proposal") is made by Little Oak Realty Ltd. Dba RE/MAX Little Oak Realty ("Little Oak") and David James Rishel ("Mr. Rishel") 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, Little Oak, Mr. Rishel and the Council have agreed upon the following facts:

1. Mr. Rishel was at all relevant times licensed as a managing broker with Little Oak.
2. Little Oak was at all relevant times licensed as a brokerage under the RESA.
3. In about 2013, Little Oak sought to expand into the provision of rental property management services, by providing rental property management services for PCP, a BC company which owned a number of rental units, and expanding to additional clients and properties.
4. In May 2014, Little Oak hired a licensee, GD, who was licensed to perform rental property management with Little Oak.
5. The principals of PCP established a new BC company, SXHXXX Management Inc. ("SXHXXX"). Neither SXHXXX nor its principals held a licence to provide any kind of real estate service at any material time. SXHXXX and its principals owned a number of rental properties which they self-managed.
6. Little Oak's plan was that in addition to the properties owned by SXHXXX and its principals, the property management business would be expanded under the license of Little Oak and that GD,

who was licensed as a property manager, would manage any new properties not owned by SXHXXX or its principals.

7. Between June of 2014 and August 2015, despite the fact that SXHXXX did not have a licence to provide such services, SXHXXX was identified in advertising, service agreements and tenancy agreements as the provider of rental property management in connection with Little Oak. In particular:
  - a. SXHXXX advertised that it was setting up a new office at "EXXXX – RE/MAX Little Oak". EXXXX Real Estate Team was the name of a team of licensees who were associated with Little Oak;
  - b. SXHXXX advertised that it was hiring property managers and that "SXHXXX/Little Oak" was acting as a property manager for a condo development; and
  - c. service agreements and tenancy agreements were used that indicated that SXHXXX provided rental property management services or did so in conjunction with Little Oak.
8. During the same period, a monthly fee was paid by Little Oak to SXHXXX for rental property management services.
9. On July 5, 2014, two brokerage trust accounts were established for "RE/MAX Little Oak Realty; Operating as SXHXXX Management Inc." (the "Property Management Trust Accounts"). Signing authorities were Mr. Rishel, a second managing broker, a licensee associated with Little Oak and two principals of SXHXXX.
10. In December 2014, GD's license with Little Oak was surrendered. GD's departure was on short notice. Another licensee with Little Oak, who was licensed for rental property management, took over the portfolio. The deficiencies described above were not detected.
11. On April 30, 2015, Little Oak submitted Annual Reports to the Council which did not disclose the existence of the Property Management Trust Accounts. Mr. Rishel and Mr. YXXXXX signed the Annual Report.
12. In July 2015, MM made application to the Council for a license to perform rental property management. His application indicated he was employed by SXHXXX and sought to be licensed to Little Oak. The application was signed by Mr. Rishel. This application precipitated concerns at the Council as to whether Little Oak was in compliance with the Rules.
13. In August 2015, the Council conducted a brokerage visit and inspection at Little Oak and made related inquiries. This disclosed the facts set out above and, further, that:
  - a. a brochure advertising rental property management in the name of SXHXXX was found in the personal office of a team of licensees associated with Little Oak. This was not a licensed address of Little Oak, but was several doors away in the same mall;
  - b. the telephone number shown on the brochure was identified to be the desk of MM, who was not licensed to provide real estate services; and

- c. the records required to be held by the brokerage in relation to the provision of rental property management services were not available for inspection.
14. On direction from the Council, on August 14, 2015, Mr. Rishel confirmed that the funds previously in the Property Management Trust Accounts were transferred to the Little Oak trust accounts, and that all records, including client files, contracts, and bank reconciliations had been moved from the EXXXX personal office location to the Little Oak office.
15. A subsequent review of the rental property management service agreements provided by Little Oak to the Council disclosed that they did not contain the information required under the Rules. In addition to being signed in the name of SXHXXX rather than Little Oak, they did not contain a description of the type of records to be kept by the brokerage, did not identify the nature and frequency of accounting statements which were to be provided to the client.
16. Mr. Rishel was the managing broker with primary responsibility for Little Oak's delivery of rental property management services. Mr. Rishel participated in requesting guidance from the Council as to the form of service agreements to be employed when Little Oak first contemplated performing rental management services. However, thereafter Mr. Rishel placed unwarranted reliance on GD to make the necessary arrangements for the provision of rental property management services by Little Oak.
17. In 2015, upon being made aware of the compliance issues, Mr. Rishel severed Little Oak's relationship with PCP and SXHXXX. Little Oak then attended to the correction and re-execution of service agreements and tenancy agreements.
18. By admission and by way of an Amended Accountant's Report for 2015 which noted exceptions in the Property Management Trust Accounts, deficiencies in the accounting records pertaining to the provision of rental property management services were identified:
  - a. Little Oak did not prepare and maintain all required records, including copies of service agreements, contrary to section 8-2 and/or 8-3 of the Rules;
  - b. Little Oak failed to provide written notice of a pooled account and beneficiaries list to the bank at which the Property Management Trust Accounts were held, contrary to section 7-3 of the Rules;
  - c. banking documents did not include the indication that the Property Management Trust Accounts were trust accounts, contrary to section 7-4(3) of the Rules;
  - d. monthly reconciliations were not prepared within 5 weeks after the end of the month being reconciled, contrary to section 8-2(c) of the Rules;
  - e. individual trust ledgers and trust liability reconciliations were not maintained for each property management client.
19. No complaint was made by a client or member of the public. In particular, no complaint was made by a client or member of the public with respect to the handling of trust funds.
20. A Notice of Disciplinary Hearing was issued on March 7, 2018 and served on Little Oak and Mr. Rishel.

21. Little Oak was the subject of previous discipline by the Council in 2008. It admitted that it committed professional misconduct pursuant to section 35(1)(a) of the RESA in that it allowed the release of deposits concerning the sale of five lots, contrary to section 18 of the *Real Estate Development Marketing Act* and section 30(3) of the RESA. Little Oak received a reprimand, was required to pay a disciplinary penalty of \$10,000.00 and pay enforcement expenses of \$750.00.
22. Mr. Rishel was the subject of previous discipline by the Council in 2004. A discipline committee found that he committed professional misconduct pursuant to section 35(1)(a) of the RESA by failing to fulfill his duties as managing broker pursuant to section 6 of the RESA and section 3-1 of the Council Rules when a deposit of \$5,000.00 was released to the buyer without a written agreement from the seller. Mr. Rishel was reprimanded, directed to complete a disciplinary education assignment and be jointly and severally liable for enforcement expenses.

### **PROPOSED FINDINGS OF MISCONDUCT**

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

1. Little Oak admits that it committed professional misconduct within the meaning of section 35(1)(a) of RESA in that, between May 2014 and December 2015, it:
  - a. provided real estate services by a person and entity that was not licensed to the brokerage, contrary to section 7(5)(a) and (b) of RESA;
  - b. paid remuneration to a person and entity for providing such services, SXHXXX, contrary to section 6-1(1) of the Rules;
  - c. regarding the Property Management Trust Accounts, it failed: to disclose those Accounts in its 2014 Accountant's Report as required by section 7-7 of the Rules, to prepare and retain the records as required by section 8-2 and 8-3 of the Rules, to provide written notice of a pooled trust account and a beneficiaries list to the bank where the Accounts were held as required by section 7-3 of the Rules, and to ensure that banking documents included the indication that they were trust accounts as required by section 7-4(3) of the Rules;
  - d. failed to ensure that all records required to be held by the brokerage were available for inspection, contrary to section 8-9.1(1), (2) and/or (3) of the Rules.
2. Mr. Rishel admits that, while licensed as a managing broker of Little Oak, he committed professional misconduct within the meaning of section 35(1)(a) of RESA between May 2014 and December 2015, in that he:
  - a. permitted Little Oak to provide real estate services through a person or entity that was not licensed to provide such services, and to pay them remuneration for such services, contrary to section 7(5)(a) and (b) of RESA and/or section 6-1 and 6-2 of the Rules;
  - b. failed to ensure that:
    - i. the rental property management service agreements employed by Little Oak contained the content required by section 4-5(1) and/or (2) of the Rules, and,

- ii. Little Oak maintained copies of the tenancy agreements and other documentation required to be retained regarding the provision of rental property management services, contrary to section 8-6(1) of the Rules and section 25 of RESA;
- c. permitted real estate services to be advertised or provided through a personal office, contrary to section 4-3 of the Rules;
- d. failed to ensure that Little Oak complied with the accounting provisions of RESA and the Rules in that it committed the violations set out in paragraph 1 above; and
- e. failed to ensure that the business of the brokerage was carried out competently and in accordance with RESA and the Regulations, Rules and/or Bylaws, contrary to section 6(2) of RESA and section 3-1(1) of the Rules.

### **PROPOSED ORDERS**

Based on the Facts herein and the Proposed Findings of Misconduct, Mr. Rishel 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. Rishel pay a discipline penalty to the Council in the amount of \$7,500.00 within ninety (90) days of the date of this Order.
2. Mr. Rishel, at his own expense, register for and successfully complete the 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.
3. Mr. Rishel be jointly and severally liable with Little Oak to pay enforcement expenses in the amount of \$1,500.00 within sixty (60) days from the date of this Consent Order.
4. If Mr. Rishel fails to comply with any of the terms of this Order, a Discipline Committee may suspend or cancel Mr. Rishel's licence without further notice to Mr. Rishel.

Based on the Facts herein and the Proposed Findings of Misconduct, Little Oak 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. Little Oak pay a discipline penalty to the Council in the amount of \$7,500.00 within ninety (90) days of the date of this Order.
2. Little Oak be jointly and severally liable with Mr. Rishel to pay enforcement expenses in the amount of \$1,500.00 within sixty (60) days from the date of this Consent Order.

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

1. Mr. Rishel and Little Oak 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. Rishel and Little Oak 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 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. Rishel and Little Oak 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. Rishel and Little Oak 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. Rishel and Little Oak hereby waive their right to appeal pursuant to section 54 of the RESA.
6. The Proposal and its contents are made by Mr. Rishel and Little Oak 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. Rishel or Little Oak in any civil proceeding with respect to the matter.

“David James Rishel”

---

**David James Rishel**

**Dated 12<sup>th</sup> day of October, 2018**

**Little Oak Realty Ltd. dba RE/MAX Little Oak Realty**

Per: “David James Rishel”

---

**David James Rishel, Authorized Signatory**

**Dated 12<sup>th</sup> day of October, 2018**