

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

DAVID JOHN BLACK
(137585)

CONSENT ORDER

RESPONDENT: David John Black, Associate Broker, Your Real Estate Centre Inc. dba Royal LePage Prince George

DATE OF REVIEW MEETING: February 27, 2019

DATE OF CONSENT ORDER: February 27, 2019

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

ALSO PRESENT: E. Duvall, Chair
E. Seeley, Executive Officer
D. Avren, Director, Legal Services
M. Sull, 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 ("COP") submitted by David John Black.

WHEREAS the COP, a copy of which is attached hereto, has been executed by David John Black.

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

1. Mr. Black be reprimanded;

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2. David John Black pay a discipline penalty to the Council in the amount of \$2,000 within ninety (90) days from the date of this Order; and
 3. David John Black pay enforcement expenses to the Council in the amount of \$1,500 within sixty (60) days from the date of this Order.

If David John Black 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 27th 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
SBC 2004, c 42 as amended**

AND

**IN THE MATTER OF
DAVID JOHN BLACK (137585)**

CONSENT ORDER PROPOSAL BY DAVID JOHN BLACK

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by David John Black ("Mr. Black") 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. Black and the Council have agreed upon the following facts:

1. Mr. Black has been licensed as a real estate trading and rental representative since 2003.
2. At all material times, Mr. Black was employed by Royal LePage Prince George ("RLPG") and he became the Managing Broker of RLPG in December of 2015.
3. On November 12, 2015, CS entered into a Multiple Listing Contract with two listing agents of RLPG (the "Listing Agents"), to sell her property located at #XXXX - XXXX 15th Avenue, Prince George, BC (the "Property").
4. The Listing Agents also acted for the buyer (the "Buyer") of the Property pursuant to a Limited Dual Agency Agreement.
5. CS was assisted in the sale of the Property by her daughter, DA, and son-in-law, SA.
6. On February 25, 2016, the Listing Agents prepared an offer on behalf of the Buyer. The relevant details of the offer were as follows:

Purchase price: \$148,500
Completion date: April 14, 2016
Subjects included: Financing, inspection, insurance, strata documents, PDS (to be removed by March 4, 2016) and the sale of the Buyer's property (to be removed by March 31, 2016).
7. On February 26, 2016, the offer was revised with a new purchase price of \$149,500.
8. The offer was accepted by CS on February 27, 2016 (the "Contract of Purchase and Sale").

9. The subjects relating to financing, inspection, strata documents and the PDS were not removed on March 4, 2016 as contemplated by the Contract of Purchase and Sale, but this information was not communicated by the Listing Agents to CS.
10. On March 5, 2016, the Buyer signed three subject removal forms, removing all subjects including the subject relating to the sale of the Buyer's home which did not need to be removed until March 31, 2016.
11. On the advice of Mr. Black, the Listing Agents prepared an additional subject removal form which contained the following addendum to the Contract of Purchase and Sale:

It is agreed and accepted that the subject clauses that were supposed to be removed on March 4, 2016, were not removed until March 6, 2016.

All other terms and conditions remain in place and time remains of the essence.

This form was signed by the Buyer on March 6, 2016.
12. DA and SA requested the above addendum be included on a Contract of Purchase and Sale Addendum rather than a subject removal form and this change was made.
13. Council's *Professional Standards Manual* states:

An expired contract cannot be revived. Licensees should draft a new Contract of Purchase and Sale for the parties to sign or have them sign an extension addendum before the contract expires.
14. On March 14, 2016, CS and the Buyer signed the Contract of Purchase and Sale Addendum.
15. The Sale of the Property completed on April 19, 2016.
16. A Notice of Disciplinary Hearing was issued on July 3, 2018 and served on Mr. Black.
17. Mr. Black has no previous discipline history with Council.

PROPOSED FINDINGS OF MISCONDUCT

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

Mr. Black committed professional misconduct within the meaning of section 35(1)(a) of the RESA in that:

- i. he failed to ensure the business of the brokerage was carried out competently and failed to exercise reasonable care and skill when he advised the Listing Agents to revive the expired Contract of Purchase and Sale by preparing subject removal forms and an addendum to the Contract of Purchase and Sale, contrary to sections 3-1(1)(b) and 3-4 of the Rules.

PROPOSED ORDERS

Based on the Facts herein and the Proposed Findings of Misconduct, Mr. Black 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. Black be reprimanded.
2. Mr. Black be liable to pay a discipline penalty to the Council in the amount of \$2,000 within ninety (90) days of the date of this Order.
3. Mr. Black be liable to pay enforcement expenses in the amount of \$1,500 within sixty (60) days from the date of this Consent Order.
4. If Mr. Black fails to comply with any of the terms of this Order, Council may suspend or cancel his licence without further notice to him.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

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

"David John Black"

DAVID JOHN BLACK

Dated 18th day of December, 2018