

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
LEAH ELVINA ELAINE MAYER
(150200)

CONSENT ORDER

RESPONDENT: Leah Elvina Elaine Mayer, Representative, 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 (the "Proposal") submitted by Leah Elvina Elaine Mayer.

WHEREAS the Proposal, a copy of which is attached hereto, has been executed by Leah Elvina Elaine Mayer.

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

1. Leah Elvina Elaine Mayer be reprimanded;

-
2. Leah Elvina Elaine Mayer pay a discipline penalty to the Council in the amount of \$3,000 within ninety (90) days from the date of this Order;
 3. Leah Elvina Elaine Mayer, 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. Leah Elvina Elaine Mayer pay enforcement expenses to the Council in the amount of \$1,500 within sixty (60) days from the date of this Order.

If Leah Elvina Elaine Mayer fails to comply with any term of this Order, the Council may suspend or cancel her licence without further notice to her, 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

LEAH ELVINA ELAINE MAYER (150200)

CONSENT ORDER PROPOSAL BY LEAH ELVINA ELAINE MAYER

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by Leah Elvina Elaine Mayer ("Ms. Mayer") 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, Ms. Mayer and the Council have agreed upon the following facts:

1. Ms. Mayer was at all relevant times licensed as a real estate trading and rental representative with Royal LePage Prince George ("RLPG"). She has been licensed as a representative continuously since 2006.
2. At all material times, Ms. Mayer was acting as co-listing agent along with another representative, DP, for CS (the "Seller") in the sale of a property located at #XXXX - XXXX 15th Avenue, Prince George, BC (the "Property").
3. Ms. Mayer and DP also acted for the buyer of the Property (the "Buyer") pursuant to a Limited Dual Agency Agreement.
4. The Seller was assisted in the sale of the Property by her daughter, DA, and son-in-law, SA.
5. On November 12, 2015, the Seller filled out a Property Disclosure Statement ("PDS"); however, the various sections pertaining to strata management, parking and storage were never completed.
6. The Property was listed on the Multiple Listing Service ("MLS") on November 12, 2015.
7. On November 15, 2015, SA sent an email to DP advising that the square footage and maintenance fees of the Property were incorrect on the MLS listing. The errors were subsequently corrected.
8. On February 25, 2016, Ms. Mayer and DP 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).

9. The offer also included the following "time clause":

However, the Seller may, upon receipt of another *subject free offer*, deliver a written notice to the Buyer or to Royal LePage Prince George requiring the Buyer to remove all conditions from the contract within 24 hours of the delivery of the notice, not to include Sundays and Statutory Holidays. Should the Buyer fail to remove all the conditions before the expiry of the notice period, the contract will terminate.

[Emphasis added]

10. SA requested the time clause changed as he believed it would not be beneficial to the Seller.

11. On February 26, 2016, the offer was revised with a new purchase price of \$149,500 and to include the following revised clause:

However, the Seller may, upon receipt of another *acceptable offer*, deliver a written notice to the Buyer or to Royal LePage Prince George requiring the Buyer to remove all conditions from the contract within 24 hours of the delivery of the notice, not to include Sundays and Statutory Holidays. Should the Buyer fail to remove all the conditions before the expiry of the notice period, the contract will terminate.

[Emphasis added]

12. The offer was accepted by CS on February 27, 2016 (the "Contract of Purchase and Sale").

13. On the same date, Ms. Mayer signed a Disclosure of Remuneration form addressed to the Buyer indicating Ms. Mayer and DP would be receiving a commission of 6% on the first \$100,000 and 3% on the remainder for the sale of the Property.

14. The subjects relating to financing, inspection, strata documents and the PDS were not removed on March 4, 2006 as contemplated by the Contract of Purchase and Sale, but this information was not communicated to the Seller.

15. 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.

16. On the advice of the Managing Broker of RLPG, an additional subject removal form was prepared 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.

17. 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.
18. 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.
19. On March 14, 2016, the Seller and the Buyer signed the Contract of Purchase and Sale Addendum.
20. The Sale of the Property completed on April 19, 2016.
21. A Notice of Disciplinary Hearing was issued on July 3, 2018 and served on Ms. Mayer.
22. Ms. Mayer 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, Ms. Mayer proposes the following findings of misconduct be made by the CORC:

Ms. Mayer committed professional misconduct within the meaning of section 35(1)(a) of the RESA in that she:

- i. published false and misleading advertising and failed to exercise reasonable care and skill when she published incorrect square footage and maintenance fee information in the initial MLS listing, contrary to sections 4-7 and 3-4 of the Rules;
- ii. failed to apply reasonable care and skill when she provided the Buyer with an incomplete PDS without having received instructions from the Seller to do so, contrary to section 3-4 of the Rules;
- iii. failed to act within the scope of her authority and was in a conflict of interest when she inserted a time clause into the Contract of Purchase and Sale without having received instructions from the Seller to do so, contrary to sections 3-3(c) and 3-3(j) of the Rules;
- iv. failed to act in the best interests of the client, failed to disclose to the client all known material information and failed to exercise reasonable care and skill when she failed to advise the Seller that the Buyer had not removed subjects by the date contemplated in the Contract of Purchase of Sale, contrary to sections 3-3(a), 3-3(f) and 3-4 of the Rules; and
- v. failed to exercise reasonable care and skill when she attempted to revive an expired Contract of Purchase and Sale by preparing subject removal forms and an addendum to the Contract of Purchase, contrary to section 3-4 of the Rules.

PROPOSED ORDERS

Based on the Facts herein and the Proposed Findings of Misconduct, Ms. Mayer 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. Mayer be reprimanded.
2. Ms. Mayer be liable to pay a discipline penalty to the Council in the amount of \$3,000 within ninety (90) days of the date of this Order.
3. Ms. Mayer, at her own expense, register for and successfully complete the Real Estate 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. Ms. Mayer be liable to pay enforcement expenses in the amount of \$1,500 within sixty (60) days from the date of this Consent Order.
5. If Ms. Mayer fails to comply with any of the terms of this Order, Council may suspend or cancel her license without further notice to her.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. Ms. Mayer 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. Ms. Mayer acknowledges she 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 she has obtained independent legal advice or has chosen not to do so, and that she is making the Proposal with full knowledge of the contents and the consequences if the Proposal is accepted.
3. Ms. Mayer 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. Ms. Mayer 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. Ms. Mayer hereby waives her right to appeal pursuant to section 54 of the RESA.
6. The Proposal and its contents are made by Ms. Mayer 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. Mayer in any civil proceeding with respect to the matter.

“Leah Elvina Elaine Mayer”

LEAH ELVINA ELAINE MAYER

Dated 29th day of January, 2019