

THE REAL ESTATE COUNCIL OF BRITISH COLUMBIA
IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*
S.B.C. 2004, c. 42 as amended

AND

IN THE MATTER OF

FARIMA ROBERTS
(055598)

CONSENT ORDER

RESPONDENT: Farima Roberts, Representative, Crest Realty
Ltd. dba RE/MAX Crest Realty

DATE OF REVIEW MEETING: January 30, 2019

DATE OF CONSENT ORDER: January 30, 2019

CONSENT ORDER REVIEW COMMITTEE: E. Mignosa
Y. Amlani
R. Gialloreto
M. Leslie

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

PROCEEDINGS:

On January 30, 2019, the Consent Order Review Committee ("Committee") resolved to accept the Consent Order Proposal ("COP") submitted by Farima Roberts.

WHEREAS the COP, a copy of which is attached hereto, has been executed by Farima Roberts.

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

1. Farima Roberts be reprimanded;

2. Farima Roberts pay a discipline penalty to the Council in the amount of \$2,500.00 within ninety (90) days from the date of this Order;
3. Farima Roberts, 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. Farima Roberts pay enforcement expenses to the Council in the amount of \$1,500.00 within sixty (60) days from the date of this Order.

If Farima Roberts 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 30th day of January, 2019, at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE


Elana Mignosa
Consent Order Review Committee

IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*
S.B.C. 2004, c. 42 as amended

AND

IN THE MATTER OF

FARIMA ROBERTS
(055598)

CONSENT ORDER PROPOSAL BY FARIMA ROBERTS

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by Farima Roberts ("Ms. Roberts") 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. Roberts and the Council have agreed upon the following facts:

1. Ms. Roberts (055598) has been licensed as a representative since 1985, other than a brief one-month unlicensed period in 1995.
2. Ms. Roberts was at all relevant times licensed as a representative with RE/MAX Crest Realty Ltd.
3. This matter arises out Ms. Robert's promise to give her client, SY, a rebate of her commission when she acted as listing agent during the period July to October 2016.
4. SY was the owner of a property located at 1308-1320 Chesterfield Ave, North Vancouver, BC (the "Property"). SY did not reside in the Property and instead owned it as an investment property.
5. On July 17, 2016, SY met with Ms. Roberts to discuss the possibility of Ms. Roberts acting as listing agent for the sale of the Property. At their meeting, SY agreed to use Ms. Roberts as her listing agent in exchange for Ms. Robert's promise pay SY a rebate of her commission in the amount of \$4,200.
6. The agreement between SY and Ms. Roberts regarding the commission rebate was not reduced to writing.
7. There is a dispute between SY and Ms. Roberts as to the terms of the rebate:
 - a. Ms. Roberts contends that while she agreed to pay SY a rebate in the amount of \$4,200, it was conditional upon acting for SY in a subsequent purchase of

another property. She says that half of the rebate of \$4,200 was payable upon the sale of the Property, and the other half payable upon the purchase of a new property. She says the commission rebate was based on a loyalty program she offers her clients, based on a 25% commission rebate when the client sells a property and subsequently buys another property with her.

- b. SY contends that the amount of the rebate was \$4,200 to be paid upon the completion of the sale of the Property. While she was open to the possibility of purchasing another property as an investment property, she wasn't certain if she would be in a financial position to do so, and communicated this to Ms. Roberts at their July 17th meeting.
8. At their meeting on July 17, 2016, SY and Ms. Roberts signed a Multiple Listing Contract which was post-dated July 19, 2018 ("MLS Contract") pursuant to which Ms. Roberts was the designated listing agent for the Property. The listing price of the Property was \$468,000.
9. The MLS Contract provided a gross commission payable to the Ms. Robert's brokerage comprising 7% of the first \$100,000 and 2.5% on the balance of the sale price of the Property.
10. The MLS Contract did not contain any reference to the Ms. Robert's promise to pay SY a commission rebate.
11. On July 29, 2016, buyer SZ offered to purchase the Property at a purchase price of \$445,000 (the "Offer").
12. On the evening of July 29, 2016, SY met with Ms. Roberts to discuss the Offer. At that meeting they had further discussions with respect to the commission rebate, and Ms. Roberts made handwritten notes on a piece of paper ("Calculations"), which
 - a. used the commission rebate amount of \$4,200 as a "discount" in calculating SY's net proceeds of sale with respect to the Offer; and
 - b. did not contain any reference to paying the commission rebate of \$4,200 in stages or the payment being conditional upon the purchase of a new property.
13. SY decided to accept the Offer and entered into a Contract of Purchase and Sale dated July 29, 2016 (the "Contract") pursuant to which she agreed to sell the Property to buyer SZ for a purchase price of \$445,000. The Contract provided a completion date of October 6, 2016.
14. Throughout the month of August and into September 2016, Ms. Roberts sent new listing information for potential properties for SY to purchase. SY expressed to Ms. Roberts her reluctance to purchase another property.
15. On September 28, 2016, SY and Ms. Roberts exchanged the following text messages regarding payment of the commission rebate:

Ms. Roberts stated:

I will pay you half when I get my commission for this apartment and the other half when you buy another apartment

SY replied:

This is one transaction that have written down discount in paper – discount \$4200

...

Also I send your hand written in paper we signed agreement at the same time for discount by email to you for your record.

Please confirm that you are proceeding as per my instruction and our agreement

16. On October 3, 2016, SY sent another text message to Ms. Roberts reiterating her demand for payment of the \$4200 commission rebate.
17. Ms. Roberts has advised the Council that she responded to SY's text message by telephone reiterating her understanding of the commission rebate arrangement.
18. The transaction regarding the Property completed on October 6, 2016.
19. On October 13, 2016, SY received a personal cheque in the amount of \$2,200 from Ms. Roberts representing partial payment of the commission rebate.
20. SY did not receive from Ms. Roberts the remaining \$2,000 representing the balance of the commission rebate that Ms. Roberts promised.
21. On October 27, 2016, the Council received a complaint from SY.
22. A Notice of Discipline Hearing was issued on October 26, 2018, and served on Ms. Roberts.
23. Ms. Roberts has no prior discipline with the Council.

PROPOSED FINDINGS OF MISCONDUCT

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

1. While licensed as a representative with RE/MAX Crest and acting as a listing agent pursuant to a listing agreement made between the brokerage and the seller SY dated July 19, 2016 in relation to property located at Chesterfield Ave, North Vancouver BC, Ms. Roberts committed professional misconduct within the meaning of section 35(1)(a) [*contravention of RESA, Regulations or Rules*] and/or (c) [*deceptive dealing*] of RESA in that:
 - a. she promised to make a payment to SY in the amount of \$4,200 representing a rebate or reduction of her commission, and

- i. she did not reduce this promise to writing, contrary to sections 5-1(4)(f) [*remuneration to be put in writing*], 3-3(a) [*best interests of the client*] and 3-4 [reasonable care and skill] of the Rules; and
- ii. she failed to carry out this promise, contrary to section 3-4 of the Rules [*falling to act honestly*].

PROPOSED ORDERS

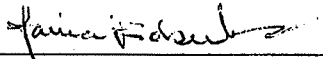
Based on the facts herein and the Proposed Findings of Misconduct, Ms. Roberts proposes that the Notice of Discipline Hearing in this matter be resolved through the following Orders being made by the CORC, pursuant to section 43 of the RESA:

1. Ms. Roberts be reprimanded.
2. Ms. Roberts pay a discipline penalty to the Council in the amount of \$2,500 within ninety (90) days of the date of this Order.
3. Ms. Roberts, at their 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. Roberts pay enforcement expenses to Council in the amount of \$1,500 within sixty (60) days from the date of this Consent Order.
5. If Ms. Roberts fails to comply with any of the terms of this Order, a Discipline Committee may suspend or cancel Ms. Roberts's licence without further notice to her.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

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



FARIMA ROBERTS

Dated 12th day of December, 2018