

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
KELLY LEE PROVENCHER
(155838)

CONSENT ORDER

RESPONDENT: Kelly Lee Provencher, Representative,
Brendan Shaw Real Estate Ltd., while
licensed with Westin Realty Ltd. dba
Royal LePage Westwin Realty

DATE OF CONSENT ORDER: January 21, 2019

CONSENT ORDER REVIEW COMMITTEE: E. Mignosa
Y. Amlani
L. Hrycan
N. Nicholson

PROCEEDINGS:

WHEREAS on December 12, 2018, a Consent Order Proposal (COP) was submitted to a Consent Order Review Committee (Committee) by Kelly Lee Provencher but was not accepted by that Committee.

WHEREAS Kelly Lee Provencher has submitted an amended COP.

WHEREAS the amended COP, a copy of which is attached hereto, has been executed by Kelly Lee Provencher.

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

1. Kelly Lee Provencher have her licence suspended for fourteen (14) days;
2. Kelly Lee Provencher not act as an unlicensed assistant during the time of her licence suspension;
3. Kelly Lee Provencher pay a discipline penalty to the Council in the amount of \$2,500 within ninety (90) days from the date of this Order;

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4. Kelly Lee Provencher, 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
 5. Kelly Lee Provencher pay enforcement expenses to the Council in the amount of \$1,500 within sixty (60) days from the date of this Order.

If Kelly Lee Provencher 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 21st day of January, 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

**KELLY LEE PROVENCHER
(155838)**

CONSENT ORDER PROPOSAL BY KELLY LEE PROVENCHER

BACKGROUND AND FACTS

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

1. Ms. Provencher (155838) has been licensed as a representative since 2008.
2. Ms. Provencher was at all relevant times licensed as a representative with Westwin Realty Ltd.
3. This matter arises out of Ms. Provencher's failure to discover and verify relevant facts regarding a strata property purchased by her client in 2017.
4. Ms. Provencher acted for the Complainant as the buyer's agent in the purchase and sale of a strata property in Kamloops, BC (the "Property").
5. At the beginning of her property search, the Complainant made it clear to Ms. Provencher that she was seeking to purchase a residence for herself, her twin 19-year old daughters, and their dog to occupy while her daughters were attending university in Kamloops. She made it clear to Ms. Provencher that she was not interested in seeing any properties that did not permit dogs.
6. On July 3, 2017, the Complainant made an offer to purchase the Property, which offer was accepted by the seller on July 4, 2017. The contract of purchase and sale (the "Contract") included the following terms: purchase price of \$210,000; deposit of \$2,000 due within 24 hours of acceptance; subject removal date of July 14, 2017; completion date of August 31, 2017; and possession date of September 1, 2017.

7. The seller's property disclosure statement dated May 7, 2017 (the "PDS") was enclosed as part of the Contract. Question 1M of the PDS asked: "Are you aware of any pet restrictions?" to which the seller answered "Yes".
8. Upon review of the PDS, the Complainant asked Ms. Provencher about Question 1M, to which Ms. Provencher advised that it was a standard clause and not to worry about it. As a result, the Complainant approved and initialed the PDS.
9. Ms. Provencher did not advise the Complainant to seek independent professional advice on the scope of the pet restriction disclosed in the PDS.
10. Ms. Provencher also did not make any independent inquiries of the scope of the pet restriction disclosed in the PDS.
11. An addendum to the Contract, dated July 3, 2017, and signed by the seller and the Complainant (the "Addendum") added several subjects for the benefit of the buyer. Pursuant to the terms of the Addendum, the seller was required to provide the buyer numerous strata documents, including the strata corporation bylaws and rules.
12. On July 6, 2017, Ms. Provencher received an email from the seller's agent, MS, containing various strata documents including: Form B certificate; strata plans; minutes from various annual general meetings; engineering report; financial statements; and minutes from various council meetings. The strata bylaws and rules were not included.
13. Ms. Provencher then forwarded the package of strata documents to the Complainant.
14. Ms. Provencher did not notice that the strata bylaws and rules were missing from the package of strata documents provided by MS. In any event, at no time did Ms. Provencher ever follow up to obtain the strata bylaws and rules to provide them to the Complainant.
15. Ms. Provencher and the Complainant communicated about various issues relating to the Property but there was no mention or discussion of pet restrictions.
16. On July 14, 2017, the Complainant removed the subjects.
17. On August 31, 2017, the transaction completed, and on or about September 1, 2017, the Complainant took possession of the Property.
18. On or about September 3, 2017, the Complainant received a notice in the mail from the property manager containing a reminder that dogs were not allowed on the premises.
19. The Complainant contacted the property manager who advised that dogs were not allowed at the Property, and she read out the relevant sections of the strata bylaws which state as follows:

Pets

- 4.15 An owner, tenant or occupant must not keep any pets on a strata lot other than the following:

- (a) A reasonable number of fish or other small aquarium animals;
- (b) A reasonable number of small caged mammals;
- (c) Up to two (2) caged birds;
- (d) One house cat.

4.16 All other pets are required to be approved by the strata council or property manager and it is the owner {sic} responsibility to ensure the strata council or property manager is aware of any changes in numbers and types of pets.

- 20. It was at this point that the Complainant realized that she had not received the strata bylaws in advance of removing subjects or at any time during the course of the purchase of the Property.
- 21. The Complainant alerted Ms. Provencher to the bylaw restricting dogs on the Property.
- 22. Ms. Provencher then requested MS to provide her with a copy of the bylaws and rules for the Property.
- 23. On September 7, 2017, MS emailed a copy of the bylaws and rules to Ms. Provencher, upon which Ms. Provencher confirmed that there was indeed a dog restriction at the Property.
- 24. The Complainant was not able to move into the Property and instead put it on the rental market in an effort to mitigate her losses. The Complainant's daughters deferred their year in university to the following year, as they were unable to find rental housing in Kamloops on such short notice.
- 25. The Council received a complaint from the Complainant on November 2, 2017.
- 26. A Notice of Discipline Hearing was issued on July 3, 2018, and served on Ms. Provencher.
- 27. Ms. Provencher has no prior discipline with the Council.
- 28. Ms. Provencher has advised the Council that she assumed that dogs were permitted at the Property, as she had previously sold other units in the building and has seen dogs on the premises. For that reason, she says she assumed the pet restriction disclosed in the PDS was not an actual prohibition on dogs.

PROPOSED FINDINGS OF MISCONDUCT

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

- 1. Ms. Provencher committed professional misconduct within the meaning of section 35(1)(a) of the RESA when acting as buyer's agent for the Complainant in the purchase of a strata property in Kamloops, BC (the "Property"). In particular:
 - a. she failed to ensure the ownership of dogs was permitted at the Property when she knew or ought to have known that this was an important feature for the Complainant, contrary to sections 3-3 (a) and (h) of the Rules;

- b. she advised the Complainant that the pet restriction disclosure in the Property Disclosure Statement was a “standard clause” without doing any independent verification regarding the scope of the restriction, contrary to sections 3-3(a) and (h) of the Rules;
- c. she failed to advise the Complainant to seek independent professional advice on the scope of the pet restriction disclosed in the Personal Disclosure Statement, contrary to sections 3-3 (a) and (d) of the Rules; and
- d. she failed to obtain a copy of the strata bylaws and rules which set out a pet restriction prohibiting dogs on the premises of the Property, contrary to sections 3-3(a) and 3-4 of the Rules.

PROPOSED ORDERS

Based on the facts herein and the Proposed Findings of Misconduct, Ms. Provencher 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. Provencher’s license be suspended for fourteen (14) days.
2. Ms. Provencher not act as an unlicensed assistant during the time of her licence suspension.
3. Ms. Provencher pay a discipline penalty to the Council in the amount of \$2,500 within ninety (90) days of the date of the Order.
4. Ms. Provencher, 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.
5. Ms. Provencher pay enforcement expenses in the amount of \$1,500 within sixty (60) days from the date of the Order.
6. If Ms. Provencher fails to comply with any of the terms of the Order, a Discipline Committee may suspend or cancel Ms.Provencher ’s licence without further notice to her.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

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

"Kelly Lee Provencher"

Kelly Lee Provencher

Dated 11th day of January, 2019