

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  
MICHEAL ALLEN O'NEILL  
(093737)

CONSENT ORDER

RESPONDENT: Micheal Allen O'Neill, Representative,  
Prudential Power Play Realty Corp. dba  
Performance Power Play Realty

DATE OF REVIEW MEETING: December 12, 2018

DATE OF CONSENT ORDER: December 12, 2018

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

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 December 12, 2018, the Consent Order Review Committee ("Committee") resolved to accept the Consent Order Proposal ("COP") submitted by Micheal Allen O'Neill.

**WHEREAS** the COP, a copy of which is attached hereto, has been executed by Micheal Allen O'Neill.

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

1. Micheal Allen O'Neill have his licence suspended for one (1) month;

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2. Micheal Allen O'Neill not act as an unlicensed assistant during the time of his licence suspension;
  3. Micheal Allen O'Neill pay a discipline penalty to the Council in the amount of \$2,000 within ninety (90) days from the date of this Order; and
  4. Micheal Allen O'Neill pay enforcement expenses to the Council in the amount of \$1,500 within sixty (60) days from the date of this Order.

If Micheal Allen O'Neill 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 12th day of December, 2018, at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

"Elana Mignosa"

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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**

**MICHEAL ALLEN O'NEILL  
093737**

**CONSENT ORDER PROPOSAL BY MICHEAL ALLEN O'NEILL**

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**BACKGROUND AND FACTS**

This Consent Order Proposal (the "Proposal") is made by Micheal Allen O'Neill ("Mr. O'Neill") 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, Mr. O'Neill and the Council have agreed upon the following facts:

1. Mr. O'Neill (093737) has been licensed as a representative since 1991.
2. Mr. O'Neill was at all relevant times licensed as a representative with Prudential Power Play Realty.
3. Mr. O'Neill has been licensed to provide trading services since 1991 (other than a four year gap in licensing between 2009 and 2013).
4. This matter arises out of Mr. O'Neill's failure to notify both the Council and his managing broker of criminal charges and convictions during the period November 2013 – April 2016, as well as Mr. O'Neill providing a false statement to the Council on his licence renewal application in May 2015.
5. On November 23, 2013, Mr. O'Neill was charged with care or control of a vehicle while impaired contrary to section 253(1)(a) of the *Criminal Code*. He did not notify the Council of this charge, nor did he notify his managing broker of this charge.
6. On November 4, 2014, Mr. O'Neill was found guilty of a driving a motor vehicle without due care and attention contrary to section 144 of the *Motor Vehicle Act*, and was sentenced to a three-month driving prohibition and a \$2,000 fine. He did not notify the Council of this conviction, nor did he notify his managing broker.
7. On May 8, 2015, Mr. O'Neill was charged with (1) assault contrary to section 266 of the *Criminal Code*; and (2) fear of injury/damage by another person contrary to section

810(1)(a) of the *Criminal Code*. He did not notify the Council of these charges, nor did he notify his managing broker.

8. On May 19, 2015, Mr. O'Neill's licence renewal application was submitted to the Council, and to question 1 of Part A which states: "*have you been convicted or are you currently charged with a criminal or other offence under a federal or provincial enactment or under the law of any foreign jurisdiction*", he checked the box "No". Mr. O'Neill has advised the Council that he completed the application on May 7, 2015 even though it was not received by the Council until May 19, 2015.
9. On September 28, 2015, Mr. O'Neill was found guilty of fear of injury/damage by another person arising from the charges of May 8, 2015, and was sentenced to one year probation and a fine. He did not notify the Council or his managing broker of this conviction.
10. On April 8, 2016, Mr. O'Neill was charged with assault contrary to section 266 of the *Criminal Code*. He did not notify the Council of this charge, nor did he notify his managing broker. On May 13, 2016, he was found guilty and sentenced to a conditional discharge with one year probation and a fine. He did not notify the Council or his managing broker of this conviction.
11. On September 8, 2016, Mr. O'Neill was charged with (1) assault contrary to section 266 of the *Criminal Code*; and (2) failure to comply with probation order, contrary to section 733.1(1) of the *Criminal Code*. These charges were ultimately dismissed.
12. On September 12, 2016, Mr. O'Neill notified his managing broker of his past criminal charges and convictions described in paras. 5, 6, 7, 9, 10, and 11 above.
13. On September 13, 2016, Mr. O'Neill notified the Council of his past criminal charges and dispositions convictions in paras. 5, 6, 7, 9, 10, 11 above.
14. Mr. O'Neill has continued to notify the Council and his managing broker of further and additional criminal charges and convictions as follows:
  - a. On September 30, 2016, Mr. O'Neill was charged with (1) uttering threats contrary to section 264.1(1) of the *Criminal Code* and (2) breach of undertaking contrary to section 245(3) of the *Criminal Code*. These charges were ultimately dismissed.
  - b. On October 2, 2016, Mr. O'Neill was charged with two counts of breach of undertaking/recognizance contrary to section 245(3) of the *Criminal Code*. On March 31, 2017, he pleaded guilty to these two counts and was sentenced on May 5, 2017 to a conditional discharge with two year's probation order and a fine.
15. On May 21, 2017 Mr. O'Neill's licence was renewed with a condition pursuant to section 15(2)(b) of the RESA that his suitability for continued licensing would be considered by the Council upon the conclusion of his pending legal proceeding.
16. A Notice of Discipline Hearing was issued on May 17, 2018 and served on Micheal Allen O'Neill.
17. Mr. O'Neill has no prior discipline history.

18. Mr. O'Neill has a prior history of providing false and/or misleading statements to the Council with respect to his criminal record as follows:
- a. On May 27, 1991 Mr. O'Neill submitted his initial licensing application and in answer to question 7(a) which states "*are you subject to a charge or indictment or have you been convicted without pardon under any law of any province, state or country, excepting for minor traffic violations?*" he checked the box "yes" and provided additional information stating: "*[i]n 1980 (approx.) I was convicted of Break and Entry to which served sixty days in a correctional institution in London, Ontario.*"
  - b. In September 1991, the Council subsequently learned that Mr. O'Neill had the following criminal record:
    - i. 1980 possession of narcotics, with a \$200 fine;
    - ii. 1982 break & enter and theft, with a suspended sentence and 10 months probation on each charge;
    - iii. 1983 (1) break & enter with intent (2) break & enter and theft, with 60 days sentence on each charge served concurrently; and
    - iv. 1985 theft under \$200, with a \$500 fine.
  - c. Mr. O'Neill was cautioned by the Council by letter dated September 26, 1991 as follows:

*Due to the number of years that have transpired, no action will be taken. However, any further incidence in you making a false application would be viewed most seriously by this Council.*
19. Mr. O'Neill has advised the Council that he did not believe that he was required to report violations under the *Motor Vehicle Act* to the Council, and that he believed criminal charges and convictions were only reportable upon license renewal. He acknowledges that his beliefs were incorrect. He has advised the Council that he did not intentionally attempt to mislead the Council.

### **PROPOSED FINDINGS OF MISCONDUCT**

For the sole purposes of the Proposal and based on the facts outlined herein, Mr. O'Neill proposes the following findings of misconduct be made by the CORC:

1. Mr. O'Neill committed professional misconduct within the meaning of section 35(1)(a) of RESA in that:
  - a. he failed to promptly notify the Council in writing of the following criminal charges and convictions against him:
    - i. November 23, 2013 charge of care of control of a vehicle while impaired contrary to section 253(1)(a) of the *Criminal Code*;
    - ii. November 4, 2014 conviction of driving a motor vehicle without due care and attention contrary to section 144 of the *Motor Vehicle Act*;

- iii. May 8, 2015 charge of assault contrary to section 266 of the *Criminal Code* and charge of fear of injury/damage by another person contrary to section 810(1)(a) of the *Criminal Code*; and
  - iv. April 8, 2016 charge of assault contrary to section 266 of the *Criminal Code*; contrary to section 2-21(2)(d) of the Rules;
- b. he failed to provide his managing broker with notice advising of the following criminal charges and convictions laid against him:
- i. November 23, 2013 charge of care of control of a vehicle while impaired contrary to section 253(1)(a) of the *Criminal Code*;
  - ii. November 4, 2014 conviction of driving a motor vehicle without due care and attention contrary to section 144 of the *Motor Vehicle Act*;
  - iii. May 8, 2015 charge of assault contrary to section 266 of the *Criminal Code* and charge of fear of injury/damage by another person contrary to section 810(1)(a) of the *Criminal Code*; and
  - iv. April 8, 2016 charge of assault contrary to section 266 of the *Criminal Code*; contrary to sections 2-21(2)(d) and 2-21(4) of the Rules; and
- c. he made a false or misleading statement in answering “No” to the question on his licence renewal application dated May 19, 2015 which states: “have you ever been convicted of, or are you currently charged with, a criminal or other offence under a federal or provincial enactment, or under the law of any foreign jurisdiction?” when he had been convicted as follows:
- i. November 4, 2014 conviction of driving a motor vehicle without due care and attention contrary to section 144 of the *Motor Vehicle Act*,
- contrary to section 35(1)(g) of RESA.

### **PROPOSED ORDERS**

Based on the facts herein and the Proposed Findings of Misconduct, Mr. O’Neill 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. O’Neill’s licence be suspended for one (1) month.
2. Mr. O’Neill be prohibited from acting as an unlicensed assistant during the licence suspension period.
3. Mr. O’Neill pay a discipline penalty to the Council in the amount of \$2,000 within ninety (90) days of the date of this Order.
4. Mr. O’Neill pay enforcement expenses in the amount of \$1,500 within sixty (60) days from the date of this Consent Order.

5. If Mr. O'Neill fails to comply with any of the terms of this Order, a Discipline Committee may suspend or cancel Mr. O'Neill's licence without further notice to him.

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

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

"Micheal Allen O'Neill"

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**MICHEAL ALLEN O'NEILL**

**Dated 29<sup>th</sup> day of October, 2018**