

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

**DEAN NICHOLAS DYMONT
(095522)**

CONSENT ORDER

RESPONDENT: Dean Nicholas Dymont, Managing Broker, LeHomes Realty First, while licensed with Metro Edge Holdings Ltd. dba Metro Edge Realty and Ocean City Realty Inc. dba Ocean City Realty

DATE OF REVIEW MEETING: March 7, 2018

DATE OF CONSENT ORDER: September 27, 2018

CONSENT ORDER REVIEW COMMITTEE: R. Holmes, Q.C.
S. Sidhu
L. Lyster

ALSO PRESENT: G. Thiele, Director, Legal Services
J. Clee, Legal Counsel for the Real Estate Council

PROCEEDINGS:

On March 7, 2018, a Consent Order Proposal (“COP”) submitted by Dean Nicholas Dymont was considered by the Consent Order Review Committee (the “Committee”) but not accepted. On April 20, 2018, a revised COP acceptable to the Committee was submitted by Mr. Dymont.

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

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

1. Mr. Dymont be reprimanded;
2. Mr. Dymont pay a discipline penalty to the Council in the amount of \$3,000.00 within ninety (90) days from the date of this Order;
3. Mr. Dymont at his own expense, register for and successfully complete the Broker's 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;
4. Mr. Dymont submit to the Chair of the Consent Order Review Committee within thirty (30) days of completion of the Broker's Remedial Education course, a letter detailing what he has learned from the Broker's Remedial Education Course and how he has changed his practice accordingly.
5. Mr. Dymont pay enforcement expenses to the Council in the amount \$3,000.00 within sixty (60) days from the date of this Order.

If Mr. Dymont 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 September, 2018, at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE



Sukh Sidhu
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

**DEAN NICHOLAS DYMONT
(095522)**

CONSENT ORDER PROPOSAL BY DEAN NICHOLAS DYMONT

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by Dean Nicholas Dymont ("Mr. Dymont") 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. Dymont and the Council have agreed upon the following facts:

1. Mr. Dymont has been licensed as a representative since 1991.
2. Mr. Dymont was licensed as a Managing Broker with Metro Edge Holdings Ltd. dba Metro Edge Realty (the "Brokerage") between November 12, 2015 and June 3, 2016 and at all relevant times was licensed as a Managing Broker with the Brokerage.
3. Mr. Dymont has been licensed as a Managing Broker at Ocean City Realty Inc. dba Ocean City Realty, since June 3, 2016.

File: 15-736

4. On December 31, 2015, W.Y. listed for sale residential property located at #2XX-6XXX Larkin Drive, Richmond, BC (the "Larkin Property") while licensed with Pan Pacific Platinum Real Estate Services Inc. dba New Coast Realty ("New Coast Realty").
5. On February 2, 2016, W.Y. re-listed the Larkin Property for sale with the Brokerage while she was still licensed with New Coast Realty. According to W.Y., prior to listing the Property, she had sent in a request to the Council to transfer her license to the Brokerage. W.Y. advised the Council that she understood it would only take a few hours for her license to be transferred from New Coast Realty to the Brokerage.
6. On February 3, 2016, W.Y.'s license was transferred from New Coast Realty to the Brokerage.
7. This matter was discovered during an Office and Records Inspection at New Coast Realty on March 2, 2016.
8. A Notice of Disciplinary Hearing was issued on February 7, 2017 and served on Mr. Dymont.
9. Mr. Dymont does not have a prior discipline history with the Council.
10. Mr. Dymont advised the Council that he believed that Ms. Yang's license had been transferred from New Coast Realty to the Brokerage on February 2, 2016.

File 15-813

11. On June 7, 2016, a member of the public notified the Council with the concern regarding the listing of residential property located at 7XXX Grady Road, Richmond, BC (the "Grady Property").
12. On February 2, 2016, W.Y. listed for sale the Grady Property with the Brokerage while she was still licensed with New Coast Realty. According to W.Y., prior to listing the Property, she had sent in a request to the Council to transfer her license to the Brokerage. W.Y. advised the Council that she understood it would only take a few hours for her license to be transferred from New Coast Realty to the Brokerage.
13. On February 3, 2016, W.Y.'s license was transferred from New Coast Realty to the Brokerage.
14. Mr. Dymont did not verify with the Council that W.Y.'s license had transferred to the Brokerage before she listed the Property for sale with the Brokerage.

15. A Notice of Disciplinary Hearing was issued on February 7, 2017 and served on Mr. Dymont.
16. Mr. Dymont advised the Council that he understood Ms. Wang's license had been transferred from New Coast Realty to the Brokerage on February 2, 2016.

File: 15-615

17. On December 15, 2015, the owner of residential property located at 1XXXX Shepherd Drive, Richmond, BC (the "Property") listed the Property for sale with Pacific Place-Arch Realty at the price of \$1,0XX,000.
18. On December 22, 2015, Z.W.Y., a buyer represented by P.Z. and W.P. of Nu Stream Realty, entered into a contract of purchase of sale for the Property. The sale price was \$1,2XX,000 (the "Contract").
19. On January 7, 2016, the Z.W.Y. entered into an Exclusive Listing Contract with X.G., a representative licensed with The Brokerage, to assign the Contract. The list price was \$1,3XX,000.
20. After listing the Property for sale, X.G. prepared an offer for her daughter, W.T.Y. (the "Offer").

21. The pertinent details of the Offer were as follows:

Assignor:	Z.W.Y.
Assignee:	W.T.Y.
Price	\$1,2XX,000
Agency:	Designated agent for Assignor – X.G. Designated agent for Assignee X.G.

22. Also, on January 9, 2016, X.G. prepared:

- a) an Assignment of Contract of Purchase and Sale addendum indicating that X.W.Y. agreed to change the name on title at completion to W.T.Y.;
 - b) a Limited Dual Agency Agreement which the Z.W.Y., W.T.Y. and X.G. signed; and
 - c) a Fee Agreement Seller Pays (Buyer and Seller not Represented) indicating that the seller will pay the Brokerage a fee of \$0 dollars and that neither the Brokerage nor X.G. were providing agency representation to Z.W.Y. or W.T.Y despite Z.W.Y. and W.T.Y. and X.G. having entered a Limited Dual Agency Agreement.
23. Prior to preparing the Offer, X.G. did not disclose in writing to Z.W.Y., that W.T.Y. was her daughter.

24. On January 11, 2016, X.G. prepared a Disclosure of Interest in Trade Form and provided it to Z.W.Y. disclosing that the assignee, W.T.Y., was her daughter. Z.W.Y. signed the Disclosure of Interest in Trade on January 11, 2016.
25. On January 11, 2016, Z.W.Y. accepted the Offer and consequently, an Assignment of Contract of Purchase and Sale was entered into between the Z.W.Y., the assignor, and W.T.Y., the assignee (the "Assignment Contract").
26. This matter was discovered during an audit at the Brokerage conducted on March 14, 2016.
27. A Notice of Discipline Hearing was issued on April 7, 2017 and served upon Mr. Dymont.
28. Mr. Dymont's written response to the Council dated July 25, 2016 states that X.G. provided the transaction file to Mr. Dymont in a timely manner and he confirmed X.G.'s relationship with her daughter. Mr. Dymont stated that when he reviewed the documentation all the appropriate documents seemed to be in order.
29. No complaint was made by Z.W.Y. or any member of the public against Mr. Dymont and no harm was caused to Z.W.Y. or any member of the public by Mr. Dymont's conduct.

File: 15-499

30. In 2010, the owner of property located at 4XXX Slocan Street, Vancouver, BC (the "Property") constructed a home at that address. The home was subject to the "owner builder" provisions of the *Homeowner Protection Act* (the "Act").
31. Section 20.1 of the *Act* provides that an owner builder must not sell or offer to sell a new home "within the prescribed period of time after the new home has been built" unless permitted by the Registrar under that *Act*. The prescribed period of time is 12 months from the date of the date the occupancy permit was issued or the property was first occupied (the "first occupancy date"). The first occupancy date for the Property was June 10, 2011.
32. Section 21(2) of the *Act* and Section 19(5) of the Regulation provide that an owner must not sell a home unless the Owner Builder Disclosure Notice has been provided to a "person offering to purchase the home".
33. On January 25, 2016, X.G., who was licensed as a representative with the Brokerage listed the Property for sale and the listing was posted for sale on MLS®.
34. On February 15, 2016, a search of the New Homes Registry indicated that the Slocan Property could not be offered for sale.

35. On February 17, 2016, L.J.X., as buyer, entered into a contract of purchase and sale in regard to the Slocan Property (the "Contract").
36. X.G. failed to ensure that the seller provided the buyer with an Owner Builder Disclosure Notice prior to the seller entering into the Contract, as required by section 21(2) of the HPA.
37. On or about March 21, 2016, the buyer's conveyancing lawyer contacted Mr. Dymont to advise that the Homeowner Protection Office had advised him that the Slocan Property may not be offered for sale without the owner providing an Owner Builder Disclosure Notice to a prospective purchaser stating whether the property is covered by home warranty insurance. The buyer's lawyer further stated to Mr. Dymont that based upon this information, the buyer considered the Contract void, and he requested the return of the buyer's deposit. Based upon the buyer's lawyer's advice that the sale was void due to the seller's non-compliance with the Act and the threat of legal action, on March 21, 2016, the Brokerage issued a cheque payable to the buyer's lawyer in the amount of \$58,XXX, returning a portion of the buyer's deposit. The cheque was signed by Mr. Dymont.
38. On April 4, 2016, the Brokerage issued a cheque payable to the buyer's lawyer in the amount of \$31,XXX, returning the balance of the buyer's deposit. This cheque was also signed by Mr. Dymont.
39. The deposit funds were withdrawn from the Brokerage's trust account without the written consent of the buyer and the seller.
40. On March 31, 2016, Mr. Dymont completed a "Collapsed Sale Form" indicating that the sale had collapsed as "No HPO Warranty available. Contract void-no Owner Builder Disclosure Notice at the time property was listed. Purchaser not provided with Owner Builder Disclosure Notice prior to execution of contract.
41. This matter arose after the Council was notified that X.G., a licensee with the Brokerage, had listed an owner built home located at 4XXX Slocan Street, Vancouver, BC (the "Slocan Property") for sale on January 25, 2016, contrary to the provisions of the *Homeowner's Protection Act* (the "HPA").
42. In his response dated November 22, 2016 to the Council's request for information as to the lack of written authorization from the buyer and the seller for the release of the buyer's \$9X,XXX deposit from the Brokerage's trust account, Mr. Dymont advised the Council that the buyer's lawyer had told him the transfer the deposit to him to hold as a stakeholder as the sale was collapsing. Mr. Dymont further stated: "Considering the deal could not proceed and we were causing damage by holding there (sic) money to the buyer that is. I found by letting the lawyer hold it as stakeholder as he said they could resolve this problem and ...(the buyer's lawyer) did say to me that there would be legal action against our company if I didn't release the funds to him so I did the math."

43. Mr. Dymont further opined to the Council that the seller was not in a position to instruct the Brokerage to hold back the money as he could not deliver the Owner Builder Disclosure Notice to the buyer and that as the market was increasing he wanted to avoid the buyer incurring further damages.
44. A Notice of Discipline Hearing was issued on June 7, 2017 and served upon Mr. Dymont.
45. No complaint was made against Mr. Dymont by the seller or any other member of the public.
46. Mr. Dymont states that he was not informed by X.G. that the Property was an owner built home and that he had no reason to know that fact at the time the Slokan Property was listed or sold.
47. Mr. Dymont recognizes the seriousness of releasing funds from trust in contravention of section of the RESA and has advised the Council that it is an offence that he has not committed in the past and will not commit again.

PROPOSED FINDINGS OF MISCONDUCT

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

File: 15-736

Mr. Dymont committed professional misconduct within the meaning of section 35(1)(a) of the RESA and acted contrary to section 6(2) of the RESA, and section 3-1(1) of the Rules, when he failed to verify that W.Y.'s license had been transferred to the Brokerage before W.Y. listed the property located at #2XX-6XXX Larkin Drive, Vancouver, BC for sale with the Brokerage.

File: 15-813

Mr. Dymont committed professional misconduct within the meaning of section 35(1)(a) of the RESA and acted contrary to section 6(2) of the RESA, and section 3-1(1) of the Rules, when he failed to verify that W.Y.'s license had been transferred to the Brokerage before W.Y. listed the property located at 7XXX Grady Road, Richmond, BC for sale with the Brokerage.

File: 15-615

Mr. Dymont committed professional misconduct within the meaning of section 35(1)(a) of the RESA and acted contrary to section 6(2) of RESA and section 3-1(1) of the Rules when, in

relation to the Assignment of a Contract of Purchase and Sale in relation to 1XXXX Shepherd Drive, Richmond, BC (the "Property"), he failed to ensure that the Brokerage performed the duties imposed on the Brokerage by its license, failed to have active control over the conduct of the brokerage's real estate business and failed to ensure there was an adequate level of supervision for employees who performed duties on behalf of the Brokerage, in that he:

1. failed to ensure that X.G., who had entered into an Exclusive Listing Contract with the Assignor, properly disclosed the nature of the representation she was providing to the Assignor and the Assignee, by permitting her to:
 - a) complete the Assignment of Contract of Purchase and Sale to indicate that she was acting as the designated agent for the Assignor and as the designated agent for the Assignee, despite X.G. having entered into a Limited Dual Agency Agreement with the Assignor and the Assignee; and
 - b) draft a Fee Agreement - Seller Pays (Buyer and Seller Not Represented) indicating that neither the buyer (Assignee) nor the seller (Assignor) were represented, despite X.G. having entered a Limited Dual Agency Agreement with Assignee and the Assignor;
2. allowed X.G. to draft an Addendum to the Assignment of Contract of Purchase and Sale indicating that the original buyer and the Assignor, Z.Y., agreed to change the name on title at completion to the Assignee, W. Y., when the Addendum was not necessary in light the Assignment of Contract of Purchase and Sale; and
3. failed to ensure that X.G. acted with reasonable care and skill and took reasonable steps to avoid a conflict of interest with the Assignor and to disclose any conflict of interest to the Assignor in a timely manner by:
 - a) allowing X.G to write an Assignment of Contract of Purchase and Sale on behalf of the Assignee, her daughter; and
 - b) failing to ensure that X.G. promptly and fully disclosed in writing to the Assignor that she was related to and acting on behalf of the Assignee, her daughter.

File: 15-499

Mr. Dymont committed professional misconduct within the meaning of section 35(1)(a) of the RESA, when, in relation to the (collapsed) sale of 4XXX Slocan Street, Vancouver (the "Property"), which was a new home built by an owner builder under the provisions of the *Homeowner Protection Act* (the "HPA"), he:

- a) contrary to sections 6(2)(c) of the RESA (control and conduct of the brokerage's real estate business) and section 3-1(1)(c) of the Rules (adequate level of supervision for representatives who perform duties on behalf of the brokerage), failed to ensure that the seller's agent had, prior to any offer being made, ensured that the seller had provided the prospective buyer with a B.C. Housing Owner Builder Disclosure Notice as was required under section 21(2) of the HPA, that stated whether the Property was built under an Owner Builder Authorization, and whether the Property was covered by a policy of home warranty insurance; and
- b) permitted the Brokerage to release the buyer's deposit, which was being held in trust by the Brokerage as a stakeholder (pursuant to section 28(2) of the RESA), without the written agreement of the buyer and the seller; in that the buyer's deposit was withdrawn from trust by way of two cheques and delivered to the buyer's lawyer.

PROPOSED ORDERS

Based on the Facts herein and the Proposed Findings of Misconduct, Mr. Dymont 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. Dymont be reprimanded.
2. Mr. Dymont pay a discipline penalty to the Council in the amount of \$3,000 within ninety (90) days of the date of this Order.
3. Mr. Dymont, at his own expense, register for successfully complete the Broker's Remedial Education Course in the time period as directed by the Council.
4. Mr. Dymont pay enforcement expenses in the amount of \$3,000 within sixty (60) days from the date of this Consent Order.
5. Mr. Dymont submit to the Chair of the Consent Order Review Committee within thirty (30) days of completion of the Broker's Remedial Education Course, a letter detailing what he has learned from the Broker's Remedial Education Course and how he has changed his practice accordingly.
6. If Mr. Dymont fails to comply with any of the terms of this Order, a Discipline Committee may suspend or cancel Mr. Dymont's licence without further notice to Mr. Dymont.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

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

“Dean Nicholas Dymont”

Dean Nicholas Dymont

Dated 20th, day of April, 2018

Signature of Mr. Dymont witnessed on the
above date by:

“Jacfar Luaua”

Witness Name *(Please Print)*

“Jacfar Luaua”

Witness Signature

