

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

DWAYNE GLEN GIESBRECHT
(082121)

AND

DWAYNE GIESBRECHT PERSONAL REAL ESTATE CORPORATION
(082121PC)

CONSENT ORDER

RESPONDENT: Dwayne Glen Giesbrecht, managing
broker, J.K. Cooper Realty

Dwayne Giesbrecht Personal Real Estate
Corporation

DATE OF REVIEW MEETING: October 24, 2018

DATE OF CONSENT ORDER: October 24, 2018

CONSENT ORDER REVIEW COMMITTEE: J. Daly
S. Heath
E. Mignosa

ALSO PRESENT: E. Duvall, Chair
E. Seeley, Executive Officer
Patrick Gilligan-Hackett, Legal Counsel
for the Real Estate Council

PROCEEDINGS:

On October 24, 2018, the Consent Order Review Committee (“Committee”) resolved to accept the Consent Order Proposal (“COP”) submitted by Dwayne Glen Giesbrecht, on his own behalf and on behalf of Dwayne Giesbrecht Personal Real Estate Corporation.

WHEREAS the COP, a copy of which is attached hereto, has been executed by Dwayne Glen Giesbrecht, on his own behalf and on behalf of Dwayne Giesbrecht Personal Real Estate Corporation.

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

1. Dwayne Glen Giesbrecht and Dwayne Giesbrecht Personal Real Estate Corporation each be reprimanded;
2. Dwayne Glen Giesbrecht and Dwayne Giesbrecht Personal Real Estate Corporation be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$5,000.00 within ninety (90) days from the date of this Order;
3. Dwayne Glen Giesbrecht, 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; and
4. Dwayne Glen Giesbrecht and Dwayne Giesbrecht Personal Real Estate Corporation be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,500.00 within sixty (60) days from the date of this Order.

If Dwayne Glen Giesbrecht or Dwayne Giesbrecht Personal Real Estate Corporation fails to comply with any term of this Order, the Council may suspend or cancel their licences without further notice to them, pursuant to sections 43(3) and 43(4) of the *Real Estate Services Act*.

Dated this 24th day of October, 2018, at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

"J. Daly"

John Daly
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

**DWAYNE GLEN GIESBRECHT
(Licence 082121)**

AND

**DWAYNE GIESBRECHT PERSONAL REAL ESTATE CORPORATION
(Licence 082121PC)**

CONSENT ORDER PROPOSAL BY DWAYNE GLEN GIESBRECHT

BACKGROUND AND FACTS

This Consent Order Proposal (“Proposal”) is made by Dwayne Glen Giesbrecht (“Mr. Giesbrecht”) and Dwayne Giesbrecht Personal Real Estate Corporation (“DG PREC”) to the Consent Order Review Committee (“CORC”) of the Real Estate Council of British Columbia (“Council”) pursuant to section 41 of the *Real Estate Service Act* (“RESA”).

For the purposes of this Proposal, Mr. Giesbrecht, on his own behalf and on behalf of DG PREC, and the Council have agreed upon the following facts:

1. Mr. Giesbrecht has been licensed as a Managing Broker (“MB”) since February, 2007.
2. Until December, 2014 Mr. Giesbrecht was the MB for a brokerage known as J.K. Cooper Realty.
3. Johnston Meier Insurance Company purchased J. K. Cooper Realty in December, 2014 at which time J. K. Cooper Realty became known as Johnston Meier Insurance Agencies & Realty Ltd.
4. For convenience and unless the context requires the brokerage to be identified by name, the brokerage with which Mr. Giesbrecht and DA were related from time to time will be referred to in these facts as the Brokerage.
5. Mr. Giesbrecht was also licensed as an Associate Broker at the Brokerage between December 1991 and February, 2007 and as a Representative, Trading, Rental at the Brokerage between August, 1989 and December, 1991.

6. Dwayne Giesbrecht Personal Real Estate Corporation has been licensed as a Personal Real Estate Corporation, Trading, Rental since August, 2011.
7. The present proceedings arise solely in relation to Mr. Giesbrecht's licence as the MB of the Brokerage.
8. In September, 2016 a member of the public, LO, contacted the Council. LO's concerns related exclusively to the conduct of DA, a licensee at the Brokerage, in relation to a rental property owned by LO and managed by DA. Ultimately, LO did not file a complaint against DA but the Council decided to conduct its own investigation into the circumstances which LO had described. The NODH issued to Mr. Giesbrecht arose wholly from the Council's investigation.
9. DA was first licensed with the Council as an Agent 9.15 (now known as an Associate Broker) in June, 1980. DA was licensed continuously as an Associate Broker from February, 1982 to November, 2017. DA retired from the industry for age-related reasons in 2017. DA did not have a disciplinary record with the Council at the time of his retirement. Throughout the time DA was licensed, DA was related to the Brokerage
10. DA was also licensed as a collection agent.
11. Starting in 1973, DA operated a collection agency known as DC.
12. In January, 1981 DA incorporated DC Ltd. to carry on the business of DC.
13. DA and DC/DC Ltd. were continuously licensed as collection agents under the legislation that was applicable from time to time.
14. Through DC Ltd., DA managed between 20 and 25 residential rental properties at any given time during the period from 1983 to 2005.
15. Between 2005 and 2016, DA was winding down the activities of DC Ltd. with the result that the number of residential rental properties under DC Ltd.'s management dropped to less than 10.
16. DA always disclosed the operations of DC Ltd. to the Brokerage in connection with his licensing applications.
17. Mr. Giesbrecht was introduced to DA when Mr. Giesbrecht joined the Brokerage in 1989. Soon after that introduction, Mr. Giesbrecht became aware that through DC Ltd. DA collected rents from a small number of properties.
18. To the best of Mr. Giesbrecht's knowledge, DC Ltd. was always properly bonded and licensed and operated its trust accounts in conformity with the applicable regulatory regime. There was no suggestion to the contrary during the Council's investigation.

19. In this regard, Mr. Giesbrecht stated to the Council during the Council's investigation that he believed DC Ltd. was permitted to collect rent under the regulatory regime applicable to licensed collection agents.
20. When the Council brought its concerns about DA's operation of DC Ltd. to Mr. Giesbrecht's attention, he took active steps to ensure DA wound up DC Ltd. in a prompt and orderly manner. Both Mr. Giesbrecht and DA cooperated fully with the Council in this matter and DC Ltd.'s operations were brought to a prompt and orderly conclusion.
21. During its investigation, the Council did not discover anything to suggest that Mr. Giesbrecht had an ulterior or improper motive for allowing DA to operate DC Ltd. while DA was related to the Brokerage.
22. A Notice of Disciplinary Hearing was issued on 20 February, 2018 and served on Mr. Giesbrecht and an amended Notice of Disciplinary Hearing was issued on [DATE TBD] and served on Mr. Giesbrecht.
23. Mr. Giesbrecht does not have a prior disciplinary record with the Council.

PROPOSED FINDINGS OF MISCONDUCT

For the sole purposes of the Proposal and based on the Facts outlined herein, Dwayne Glen Giesbrecht, on his own behalf and on behalf of DG PREC, proposes the following findings of misconduct be made by the CORC:

Dwayne Glen Giesbrecht committed professional misconduct within the meaning of section 35(1)(a) of the RESA in that he:

1. failed to be responsible for the control and conduct of the real estate business of Johnston Meier Insurance Agencies & Realty Ltd.'s ("Brokerage") when he permitted DA, a representative who was licensed in relation to the Brokerage, to provide real estate services, being rental property management services ("Services"), through an unlicensed entity, DC Ltd., and to accept remuneration for the Services from a person other than the Brokerage, contrary to section 6(2)(c) of RESA;
2. failed to be actively engaged in the management of the Brokerage when, contrary to section 3-1(1)(a) of the Rules, he:
 - i. allowed DA to provide the Services through DC Ltd., contrary to section 7(3)(a) of RESA;
 - ii. allowed DA to accept remuneration for the Services from a person other than the Brokerage, contrary to section 7(3)(b) of RESA;
 - iii. failed to require DA to promptly pay or deliver to the Brokerage all money held or received by DA, whether directly or through DC Ltd., from, for or on behalf of

a principal in relation to the Services, in conformity with section 27(1)(a) of RESA;

- iv. failed to require DA to promptly pay or deliver to the Brokerage all money held or received by DA, whether directly or through DC Ltd., on account of remuneration for the Services, in conformity with section 27(1)(b) of RESA; and
 - v. failed to require DA to promptly provide to him the original or a copy of all records referred to in section 8-6 of the Rules in relation to the Services, in conformity with Rule 3-2(1)(c); and
3. failed, when he knew or ought to have known that DA was providing the Services in a manner that might constitute professional misconduct within the meaning of Rule 3-1(2)(a), to take reasonable steps to deal with the matter, contrary to section 3-1(2) of the Rules.

PROPOSED ORDERS

Based on the Facts herein and the Proposed Findings of Misconduct, Mr. Giesbrecht, on his own behalf and on behalf of DG PREC, 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. Dwayne Glen Giesbrecht and Dwayne Giesbrecht Personal Real Estate Corporation be reprimanded.
2. Dwayne Glen Giesbrecht and Dwayne Giesbrecht Personal Real Estate Corporation be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$5,000.00 within ninety (90) days of the date of this Order.
3. Dwayne Glen Giesbrecht, at his own expense, register for and successfully complete the Broker's 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. Dwayne Glen Giesbrecht and Dwayne Giesbrecht Personal Real Estate Corporation be jointly and severally liable to pay enforcement in the amount of \$1,500.00 within sixty (60) days from the date of this Consent Order.
5. If Dwayne Glen Giesbrecht or Dwayne Giesbrecht Personal Real Estate Corporation fail to comply with any of the terms of this Order, a Discipline Committee may suspend or cancel the licenses of Dwayne Glen Giesbrecht and Dwayne Giesbrecht Personal Real Estate Corporation without further notice to Dwayne Glen Giesbrecht and Dwayne Giesbrecht Personal Real Estate Corporation.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. Mr. Giesbrecht, on his own behalf and on behalf of DG PREC, 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. Giesbrecht, on his own behalf and on behalf of DG PREC, has been advised of and understands the right to obtain independent legal advice regarding the disciplinary process, including with respect to the execution and submission of the Proposal.
3. Mr. Giesbrecht, on his own behalf and on behalf of DG PREC, 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. Giesbrecht, on his own behalf and on behalf of DG PREC, 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. Giesbrecht, on his own behalf and on behalf of DG PREC, hereby waives his right to appeal pursuant to section 54 of the RESA.
6. The Proposal and its contents are made by Mr. Giesbrecht and DG PREC 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. Giesbrecht in any civil proceeding with respect to the matter.

"D. G. Giesbrecht"

Dwayne Glen Giesbrecht on his own behalf and on behalf of Dwayne Giesbrecht Personal Real Estate Corporation

Dated 21 day of September, 2018

Signature of Dwayne Glen Giesbrecht witnessed on the above date

"A. Smith"

Witness Name *(Please Print)*

"A. Smith"

Witness Signature