

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

JOSHUA ARI ROSENBERG
(146646)

CONSENT ORDER

RESPONDENT: Joshua Ari Rosenberg, managing broker, Pan
Pacific Platinum Realty Inc. dba New Coast Realty

DATE OF REVIEW MEETING: October 19, 2018

DATE OF CONSENT ORDER: October 19, 2018

CONSENT ORDER REVIEW COMMITTEE: E. Mignosa
S. Heath
S. Sidhu

ALSO PRESENT: D. Avren, Director, Legal Services
J. Clee, Legal Counsel for the Real Estate Council
J. Moore, Legal Counsel for the Real Estate
Council

PROCEEDINGS:

On October 19, 2019, the Consent Order Review Committee ("Committee") resolved to accept the Consent Order Proposal ("COP") submitted by Joshua Ari Rosenberg.

WHEREAS the COP, a copy of which is attached hereto, has been executed by Joshua Ari Rosenberg.

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

1. Joshua Ari Rosenberg have his licence suspended for fourteen (14) days;
2. Joshua Ari Rosenberg will not act as a managing broker, associate broker, licensee or an unlicensed assistant during the time of his licence suspension;

3. Joshua Ari Rosenberg be prohibited from being the sole managing broker of any brokerage for a period of one (1) year following the date of this Order;
4. Joshua Ari Rosenberg, 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
5. Joshua Ari Rosenberg pay enforcement expenses to the Council in the amount of \$4,500.00 within sixty (60) days from the date of this Order.

If Joshua Ari Rosenberg 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 19th day of October, 2018, at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

"E. Mignosa"

E. 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

**JOSHUA ARI ROSENBERG
(146646)**

CONSENT ORDER PROPOSAL BY JOSHUA ARI ROSENBERG

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by Joshua Ari Rosenberg ("Mr. Rosenberg") 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, Joshua Ari Rosenberg and the Council have agreed upon the following facts:

1. Joshua Ari Rosenberg (146646) has been licensed as a representative since August 23, 2005.
2. Mr. Rosenberg was licensed as a Managing Broker with Pan Pacific Platinum Realty Inc. dba New Coast Realty (the "Brokerage") between November 24, 2014 and April 13, 2016.
3. Mr. Rosenberg has been licensed as an Associate Broker with the Brokerage since April 13, 2016.
4. Joshua Ari Rosenberg was at all relevant times licensed as a Managing Broker with the Brokerage.

File 14-398

5. In February, 2015, S.L., who was licensed as a representative with the Brokerage and who acted the buyer's agent in relation to the sale of a townhome unit located at #X-60XX Williams Road, Richmond, BC (the "Property"), allowed her unlicensed assistant S.G. to attend at the Property with the buyer, to provide advice to the buyer regarding the purchase of the Property, to communicate with the seller's agent regarding the buyer's offer and to arrange further showings of the Property to the buyer.

6. On March 23, 2015, R.L., the managing broker for the seller's brokerage, made a complaint to the Council that S.L. had permitted S.G. to provide real estate services to the buyer despite S.G. not being licensed to provide real estate services.
7. In their responses to the Council, S.L. and S.G. stated that the buyer had been a close friend of S.G. for over 7 years, and that S.G. accompanied the buyer to an open house at the Property to provide her opinion, advice and moral support to her friend. S.G. stated that she herself was interested in buying a property in the same complex.
8. In the course of its investigation into the complaint, the Council reviewed another transaction involving S.L. and S.G. regarding the sale of 35XX Francis Road, Richmond, BC (the "Francis Road Property"), in which S.L. acted as the buyer's agent.
9. In April 2015, S.G. scheduled two appointments for the buyer to view the Francis Road Property once before the buyer made an offer and once after the buyer's offer was accepted. S.G. attended both viewings with the buyer.
10. On June 5, 2015, the sale of the Francis Road Property completed.
11. S.L. directed the Brokerage to pay the entire portion of the commission payable to her on the sale of the Francis Road Property, to S.G.
12. In accordance with S.L.'s direction, the brokerage paid the entire commission payable on the sale of the Francis Road Property, to S.G.
13. A Notice of Disciplinary Hearing was issued on November 23, 2016 and served on Joshua Ari Rosenberg.
14. Mr. Rosenberg advised the Council that he had no knowledge of S.G. providing real estate trading services to the buyers of the Property and the Francis Road Property. Mr. Rosenberg was of the view that that S.G. was not providing real estate services to the buyer in regard to the Property, but merely attended, with her old friend, an open house at a complex in which both she and her friend were interested.
15. With respect to the Francis Road Property, Mr. Rosenberg advised the Council that he was not aware that S.G. had been involved in scheduling appointments or attending with the buyer to view the Francis Road Property.
16. Mr. Rosenberg further advised the Council during its investigation that he did not know why S.G. received the commission in relation to the sale of the Francis Road Property, when S.G. was not licensed to provide real estate services at the time of the sale of the Francis Road Property. Upon further enquiry by the Council, Mr. Rosenberg informed the Council that S.L. had advised him that she directed her commission be payable to S.G. not as remuneration for real estate trading services, but because she wanted to help S.G. with a down payment on her purchase of a home, as she was short of funds, and to reduce her own tax liability.

17. The Brokerage Policy Manual sets out what unlicensed assistants may and may not do and is consistent with the Rules.
18. A Notice of Discipline Hearing was issued on November 23, 2016 and served upon Mr. Rosenberg.
19. An Amended Notice of Discipline Hearing was issued on September 14, 2018 and served upon Mr. Rosenberg.

File 15-640

20. On December 10, 2015, M.L. who was licensed as a representative with the Brokerage, acted as agent for the buyer in regard to the sale of 52XX Turquoise Drive, Richmond, BC. The buyer was an associate (director) of the Brokerage.
21. M.L. failed to deliver to the seller or the seller's agent, a Disclosure of Interest in Trade form disclosing that the buyer was an associate (director) of the Brokerage with whom she was licensed.
22. The Council discovered that M.L. had not delivered the Notice of Disclosure of Trade form to the seller or the seller's agent during an audit at the Brokerage.
23. In her response to the Council M.L. advised that she was not aware at the time she wrote the offer that she was required to disclose to the seller in writing that her client, H.P., was an associate (director) of the Brokerage with whom she was licensed. M.L. has entered a Consent Order in relation to this matter.
24. Mr. Rosenberg confirmed to the Council that he was not consulted by M.L. regarding the disclosure of the buyer's interest.
25. The Brokerage's Policy Manual did not include both definitions of "associate" as set out in Section 5-7 of the Rules, and particularly, did not warn licensees that directors and shareholders of the brokerage were "associates" and would require Disclosures of Interest in Trade forms.
26. A Notice of Discipline Hearing was issued on May 31, 2017 and served on Mr. Rosenberg.

File 15-170

27. On July 6, 2015, S.L. and K.Z., both representatives licensed with the Brokerage and members of the S.L. team, listed for sale residential property located at 41XX Coldfall Road, Richmond, BC. (the "Coldfall Property").
28. The home on the Property was a new home built by an owner builder under the provisions of the *Homeowner Protection Act* (the "HPA").
29. The Brokerage's Policy Manual advised licensees of the requirement to obtain a copy of the Owner Builder Disclosure Notice (if the owner is classified as an Owner Builder) or

the 2-5-10 Warranty (if the owner is a Residential Builder) for all new home listings before listing the property and offering the property for sale. The Brokerage's Policy Manual also states that if the licensees do not have copies of either of those documents, they are not allowed to list or offer the Property for sale.

30. The Coldfall Property was listed for sale without S.L. or K.Z. obtaining either an Owner Builder Disclosure Notice or a copy of any 2-5-10 Warranty, despite S.L. and K.Z. indicating in the listing information that the Coldfall Property was one year old at the time of the listing.
31. On August 7, 2015, K.Z. asked T.S., another member of the S.L. team, to prepare a contract of purchase of Sale in regard to the Coldfall Property.
32. T.S. became a member of the S.L. team on June 17, 2015.
33. On August 8, 2015, the buyer and the seller entered into a contract of purchase and sale (the "Contract").
34. The Contract contained the following terms:

Price:	\$2,300,000
Deposit:	\$110,000 to be held in trust with New Coast Realty within 24 hours of acceptance
Conditions:	Subject free offer
Completion:	August 27, 2015
Agency: D.A. Seller	S.L. and K.Z. licensed with New Coast Realty
D.A. Buyer	T.S. licensed with New Coast Realty
35. The Contract included the clause "It is a fundamental term of this contract that the mandatory warranty insurance coverage required pursuant to the Homeowner Protection Act be provided."
36. There was no home warranty insurance coverage for the Coldfall Property as the home was an owner-built home.
37. Prior to the Contract, the seller did not provide the buyer with a BC Housing Owner Builder Disclosure Notice as he was required to do under section 21(2) of the HPA, that stated whether the Coldfall Property was built under an Owner Builder Authorization and whether the Coldfall Property was covered by a policy of home warranty insurance.
38. The Contract did not identify all members of the S.L. team as agents for the seller and the buyer.

39. On July 17, 2015, it was brought to the attention of the Council that S.L. and K.Z. had listed the Coldfall Property without ensuring the owner-builder was in compliance with the HPA. According to the New Home Registry of the Homeowner's Protection Office, the Coldfall Property could not be offered for sale until the Owner Builder Disclosure Notice was issued by the Homeowner Protection Office.
40. The Owner Builder Disclosure Notice was issued by the HPA on August 18, 2015 and provided to the buyer before the sale of the Coldfall Property completed on August 27, 2015.
41. A Notice of Discipline Hearing was issued on January 19, 2018 and served upon Mr. Rosenberg.
42. No complaint was received from the buyer or the seller regarding this matter and no harm was caused to the buyer, seller or any member of the public as a result of S.L.'s or K.Z.'s conduct.
43. A Notice of Discipline Hearing was issued on January 19, 2018 and served upon Mr. Rosenberg.
44. Mr. Rosenberg has no prior discipline history with the Council.

File 16-041

45. On April 25, 2015 a contract of purchase and sale was entered into in respect of residential property located at 3XXX West 44th Avenue, Vancouver, BC (the "Property").
46. The terms of the contract were as follows:

Seller:	C.R. & J. M.
Buyer:	M.R.
Price:	\$2,198,888
Completion:	August 27, 2015
Buyer's Agent:	C.C. and RXXXXX Realty Group
Seller's Agent:	R.S. and S.G. WXXX CXXXXX
Conditions:	Subject to seller obtaining a Grant of Probate for Estate of D.M. confirming appointment of C.R. and J.M. as executors of the Estate of D.M. before July 29, 2015 Buyer has right to assign contract
47. On May 26, 2015, Probate was granted for the Estate of D.M.
48. On August 27, 2015, M.R. failed to complete the purchase of the Property.
49. On or before September 5, 2015, M.H., a representative licensed with RXX GXXX TXXXX Realty, was introduced to M.R. by an acquaintance, who advised M.H. that M.R. had bought a property and wished to assign or sell the Property. M.H. contacted N.W. a

representative licensed with Pan Pacific Platinum Realty Corp dba New Coast Realty ("New Coast") to advise that M.R. wanted to sell the Property.

50. On September 6, 2015, N.W. prepared an offer for her buyer client for the Property. M.H. sent N.W. a copy of the title and a letter of probate. After reviewing the documents N.W. asked M.H. why M.R. did not appear as the registered owner of the Property. M.H. advised N.W. that M.R. had bought the Property and that the lawyers were handling the matter.
51. As N.W. was confused, as the title did not indicate M.R. as the seller, she sought advice from Mr. Rosenberg, her managing broker.
52. On September 7 or 8, 2015, Mr. Rosenberg met with N.W. and M.H. regarding N.W. writing an offer on the Property for her buyer client, and to discuss the letter of probate and the title provided by M.H. to N.W. Mr. Rosenberg enquired of M.H. as to who M.R. was, and as to his ability to sell the Property. M.H. advised Mr. Rosenberg that M.R. had just bought the Property from the Estate of D.M. and wished to sell the Property. Mr. Rosenberg accepted M.H. assurances that M.R. had bought the Property and was capable of selling it, and advised N.W. that it was okay to proceed with writing an offer for the Property on behalf of her client.
53. After M.H. provided N.W. with a fee agreement signed by M.R. on September 10, 2015, N.W. emailed her buyer's offer to M.H. Mr. Rosenberg did not advise N.W. to include a condition in the buyer's offer making it subject to the buyer obtaining and being satisfied with legal advice regarding M.R.'s ability to sell the Property.
54. The buyer's offer was accepted and the buyer paid a deposit to the Brokerage in the amount of \$120,000.
55. On or about September 16, 2015, N.W. learned that on September 9, 2015, the Property had been relisted for sale on behalf of the Estate of D.M.

PROPOSED FINDINGS OF MISCONDUCT

For the sole purposes of the Proposal and based on the Facts outlined herein, Joshua Ari Rosenberg proposes the following findings of misconduct be made by the CORC:

File 14-398

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

1. [deleted]
2. [deleted]

3. contrary to section 6-1(1) of the Rules, allowed the brokerage to pay S.G., an unlicensed assistant, the commission in relation to the sale of 35XX Francis Road, Richmond, BC, when she was not licensed at the time to provide real estate services
4. [deleted]

File 15-640

Mr. Rosenberg committed professional misconduct within the meaning of section 35(1)(a) of RESA and acted contrary to section 6(2)(c) of the RESA and section 3-1(1) the Rules, in that he failed to ensure that the brokerage performed the duties imposed on the brokerage by its license, failed to have active control and conduct of the brokerage's real estate business, and failed to ensure that there was an adequate level of supervision for representatives who perform duties on behalf of the brokerage when, in relation to the sale of 52XX Turquoise Drive, Richmond, BC he failed to ensure that the buyer's agent, M.L. provided the Seller or the Seller's agent with a Disclosure of Interest of Trade form disclosing that the Buyer, H.P. was an associate (director) of the brokerage with whom M.L. was licensed.

File 15-170

Mr. Rosenberg 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, in relation to the purchase and sale of a residential property located at 41XX Coldfall Road, Richmond BC (the "Property"), he failed in his duties as the managing broker 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:

- a. failed to ensure that S.L. and K.Z., both licensed as representatives of the brokerage, and members of the S.L. team, understood and knew not to provide trading services to the seller of the Property without S.L. and/or K.Z. first:
 - i. disclosing to the seller that a member or members of the S.L. team were acting as agents for the buyer;
 - ii. obtaining the seller's prior written consent to the S.L. team acting for both the seller and the buyer;
 - iii. ensuring that the seller entered into a limited dual agency agreement; and
 - iv. ensuring that all members of the S.L. Team were identified on the contract of purchase and sale.
- b. failed to ensure that S.L. and K.Z. and their team members understood the duty to take reasonable steps to avoid a conflict of interest, and to not act for both the seller and the buyer without the buyer's and the seller's prior written consent to limited dual agency representation by members of the S.L. team;

- c. failed to ensure that S.L. and K.Z. and their team members understood to promptly and fully disclosed to the seller and to the buyer the existence of a conflict of interest as set out in paragraph 2 above; and
- d. failed to ensure that S.L. and K.Z. and their team members understood that prior to any offer being made for the Property, which was a new home built by an owner builder under the provisions of the Homeowner Protection Act (the “HPA”), the seller was required to provide the buyer with a BC Housing Owner Builder Disclosure Notice 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.

File 16-041

Mr. Rosenberg committed professional misconduct within the meaning of section 35(1)(a) of RESA, and acted contrary to section 6(2)(c) of RESA and section 3-1(1)(b) of the Rules in that when N.W., a representative licensed with New Coast, sought advice as to whether her buyer client should proceed with an offer on property located at 3XXX West 44th Avenue, Vancouver, BC (the “Property”) when the person identified as the seller, M.R., was not the registered owner of the Property, he:

- a. failed to make adequate enquiries or take reasonable steps to verify that M.R. had the authority to sell the Property; and
- b. allowed N.W. to write an offer on the buyer’s behalf for the Property without advising her to include a condition in the buyer’s offer making the offer subject to the buyer obtaining and being satisfied with legal advice regarding M.R.’s authority to sell the Property.

PROPOSED ORDERS

Based on the Facts herein and the Proposed Findings of Misconduct, Mr. Rosenberg proposes that the Notice of Discipline Hearings in these matters be resolved through the following Orders being made by the CORC, pursuant to section 43 of the RESA:

1. Mr. Rosenberg’s license be suspended for a period of fourteen (14) days.
2. Mr. Rosenberg be prohibited from acting as a Managing Broker, Associate Broker, licensee or as an unlicensed assistant during the licence suspension period.
3. Mr. Rosenberg be prohibited from being the sole managing broker of any brokerage for a period of (1) year following the date of this Order.
4. Joshua Ari Rosenberg, at his own expense, register for 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.
5. Joshua Ari Rosenberg pay enforcement in the amount of \$4,500 within sixty (60) days from the date of this Consent Order.

If Joshua Ari Rosenberg fails to comply with any of the terms of this Order, a Discipline Committee may suspend or cancel Joshua Ari Rosenberg's licence without further notice to Joshua Ari Rosenberg.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

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

"Joshua Ari Rosenberg"

JOSHUA ARI ROSENBERG

Dated 24th day of October, 2018