

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

RICHARD STEPHEN HAMER-JACKSON
082784

AND

RICK HAMER-JACKSON PERSONAL REAL ESTATE CORPORATION
082784PC

CONSENT ORDER

RESPONDENT:	Richard Stephen Hamer-Jackson, representative, Norwich Real Estate Services Inc. dba RE/MAX Kelowna Rick Hamer-Jackson Personal Real Estate Corporation
DATE OF REVIEW MEETING:	September 14, 2018
DATE OF CONSENT ORDER:	September 14, 2018
CONSENT ORDER REVIEW COMMITTEE:	R. Holmes, QC E. Mignosa J. Lynch
ALSO PRESENT:	D. Avren, Director, Legal Services G. Thiele, Acting Manager, Legal Services L. Fong, Independent Legal Counsel P. Gilligan-Hackett, Legal Counsel for the Real Estate Council

PROCEEDINGS:

On September 14, 2018, the Consent Order Review Committee (the "Committee") resolved to accept the Consent Order Proposal ("COP") submitted by Richard Stephen Hamer-Jackson, on his own behalf and on behalf of Rick Hamer-Jackson Personal Real Estate Corporation.

WHEREAS the COP, a copy of which is attached hereto, has been executed by Richard Stephen Hamer-Jackson, on his own behalf and on behalf of Rick Hamer-Jackson Personal Real Estate Corporation.

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

1. Richard Stephen Hamer-Jackson and Rick Hamer-Jackson Personal Real Estate Corporation each be reprimanded;
2. Richard Stephen Hamer-Jackson and Rick Hamer-Jackson Personal Real Estate Corporation be jointly and severally liable to pay a discipline penalty to the Council in the amount of \$5,000 within ninety (90) days from the date of this Order;
3. Richard Stephen Hamer-Jackson, at his 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
4. Richard Stephen Hamer-Jackson and Rick Hamer-Jackson Personal Real Estate Corporation be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,500 within sixty (60) days from the date of this Order.

If Richard Stephen Hamer-Jackson or Rick Hamer-Jackson 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 14th day of September, 2018, at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

“R. Holmes, QC”

R. Holmes, QC, Chair
Consent Order Review Committee

Atch.

**IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*
S.B.C. 2004, c. 42 as amended**

AND

IN THE MATTER OF

RICHARD STEPHEN HAMER-JACKSON (082784)

AND

RICK HAMER-JACKSON PERSONAL REAL ESTATE CORPORATION (082784PC)

**CONSENT ORDER PROPOSAL BY
RICHARD STEPHEN HAMER-JACKSON**

AND

RICK HAMER-JACKSON PERSONAL REAL ESTATE CORPORATION

BACKGROUND AND FACTS

This Consent Order Proposal (“Proposal”) is made by Richard Stephen Hamer-Jackson (“RHJ”) on his own behalf and on behalf of Rick Hamer-Jackson Personal Real Estate Corporation (“RHJ 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 the Proposal, RHJ and RHJ PREC and the Council have agreed upon the following facts:

1. RHJ (082784) has been licensed as a Representative, Trading or a Representative, Trading, Rental since 1989. During this time, there were four brief periods when RHJ was unlicensed.
2. RHJ PREC (082784PC) has been licensed continuously for Trading since November, 2017.
3. RHJ was licensed at all relevant times as a Representative, Trading with RE/MAX Kelowna.
4. This matter arises from the sale of a residential property located at XXXX Thacker Drive, West Kelowna, British Columbia (“Property”).
5. On or about February 10, 2015 the sellers (“Sellers”) of the Property entered into a multiple listing contract with RHJ and his business partner. RHJ’s business partner had no further relevant involvement in the sale of the Property.

6. On or about February 10, 2015 the Sellers prepared a property disclosure statement ("PDS") for the Property. The water supply to the Property was identified as municipal. The PDS did not disclose any problem with the water supply to the Property.
7. On or about May 25, 2015 the buyers ("Buyers") of the Property entered into a contract of purchase and sale ("Contract") for the Property. The Buyers were represented in the purchase of the Property by a licensed representative, JS.
8. The Contract incorporated the PDS and included several subject to clauses for the benefit of the Buyers. The subject to clauses included provision for an inspection.
9. The Contract provided for completion of the purchase of the property on July 3, 2015.
10. On June 3, 2015 the Buyers' inspector undertook the inspection of the Property. His report noted that the water supply to the house on the Property was not operating on the date of the inspection.
11. On June 5, 2015 the Buyers removed all of the subject to clauses contained in the Contract and paid the deposit required under the Contract.
12. On July 4, 2015 the Buyers took possession of the Property and discovered that the pipe connecting the municipal water supply to the house on the Property had burst at some time and that water was being supplied to the house on the Property from the neighbouring property by means of a garden hose. The hose could be readily observed by a person visiting the Property.
13. The Buyers paid slightly in excess of \$4,500.00 to correct the water supply problem.
14. RHJ says that he did not know the water supply to the house had failed. However, RHJ acknowledges that when he visited the Property in April, 2015 he observed a hose running from the house on the neighbouring property to the house on the Property. At this time, one of the Sellers told RHJ that there was an issue with the water and that it would be fixed immediately.
15. RHJ says that when he subsequently attended the Property during the Spring, 2015 for showings, "there was no talk of any water problems at all until after the completion of the sale".
16. At all relevant times, RHJ knew the house on the Property was in below average condition.
17. Although RHJ:
 - a. had observed the hose running from the house on the neighbouring property to the house on the Property in April, 2015;
 - b. had been told by one of the Sellers in April, 2015 there was an issue with the water and that it would be fixed immediately;
 - c. knew the house on the Property was in below average condition; and
 - d. knew the PDS which had been incorporated into the Contract did not record any issue with the water supply to the house;

he failed:

- a. to make any inquiries to the Sellers about the status of the water supply to the Property;
 - b. to confirm that the issue with the water had been fixed immediately; and
 - c. to advise the Sellers to prepare an amended PDS to reflect the existence of an issue with the water supply to the house continued to exist.
18. A Notice of Disciplinary Hearing was issued on the 10th day of April, 2018 and served on RHJ and RHJ PREC.
19. RHJ 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 herein Richard Stephen Hamer-Jackson proposes, on his own behalf and on behalf of RHJ PREC, that the following findings of misconduct be made by the CORC:

Richard Stephen Hamer-Jackson committed professional misconduct within the meaning of section 35(1)(a) of the RESA when, in connection with the purchase and sale of a residential property located at XXXX Thacker Drive, West Kelowna, BC ("Property") by a contract of purchase and sale dated May 25, 2015 ("Contract") and while representing the sellers ("Sellers"), he:

1. failed to act honestly and with reasonable care and skill when, although he knew or ought to have known there was a defect in the water supply ("Defect") to the Property, he:
 - i. took no steps or, in the alternative, insufficient steps both to determine the nature of the Defect and to ensure the Defect was either repaired or disclosed in a timely and sufficient manner to prospective buyers of the Property; and
 - ii. did not advise the Sellers to amend their Property Disclosure Statement dated February 10, 2015 ("PDS") to reflect the existence of the Defect;

contrary to section 3-4 of the Rules.

PROPOSED ORDERS

Based on the Facts herein and the Proposed Findings of Misconduct Richard Stephen Hamer-Jackson, on his own behalf and on behalf of Rick Hamer-Jackson Personal Real Estate Corporation, 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. Richard Stephen Hamer-Jackson and Rick Hamer Jackson Personal Real Estate Corporation shall be reprimanded;

2. Richard Stephen Hamer-Jackson and Rick Hamer-Jackson Personal Real Estate Corporation shall 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. Richard Stephen Hamer-Jackson, at his own expense, shall register for and successfully complete the Real Estate Trading Services 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. Richard Stephen Hamer-Jackson and Rick Hamer-Jackson Personal Real Estate Corporation shall be jointly and severally liable to pay enforcement expenses to the Council in the amount of \$1,500 within sixty (60) days from the date of this Order; and
5. If Richard Stephen Hamer-Jackson or Rick Hamer-Jackson Personal Real Estate Corporation or both fail to comply with any of the terms of this Order, a Discipline Committee may suspend or cancel the licenses of Richard Stephen Hamer-Jackson and Rick Hamer-Jackson Personal Real Estate Corporation without further notice to Richard Stephen Hamer-Jackson and Rick Hamer-Jackson Personal Real Estate Corporation.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. Richard Stephen Hamer-Jackson, on his own behalf and on behalf of Rick Hamer-Jackson Personal Real Estate Corporation, 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. Richard Stephen Hamer-Jackson, on his own behalf and on behalf of Rick Hamer-Jackson Personal Real Estate Corporation, has been advised of and understands his right to obtain independent legal advice regarding the disciplinary process, including with respect to the execution and submission of the Proposal.
3. Richard Stephen Hamer-Jackson, on his own behalf and on behalf of Rick Hamer-Jackson Personal Real Estate Corporation, 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. Richard Stephen Hamer-Jackson, on his own behalf and on behalf of Rick Hamer-Jackson Personal Real Estate Corporation, 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. Richard Stephen Hamer-Jackson, on his own behalf and on behalf of Rick Hamer-Jackson Personal Real Estate Corporation, hereby waives the right to appeal pursuant to section 54 of the RESA.

6. The Proposal and its contents are made by Richard Stephen Hamer-Jackson, on his own behalf and on behalf of Rick Hamer-Jackson Personal Real Estate Corporation, 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 Richard Stephen Hamer-Jackson and Rick Hamer-Jackson Personal Real Estate Corporation in any civil proceeding with respect to the matter.

“Richard Stephen Hamer-Jackson”

**Richard Stephen Hamer-Jackson on his own behalf
and on behalf of Rick Hamer-Jackson Personal Real
Estate Corporation**

Dated 16th day of July, 2018

Signature of Richard Stephen Hamer-Jackson
witnessed on the above date by:

“Tanya Stathopoulos”

Witness Name (*Please Print*)

“Tanya Stathopoulos”

Witness Signature