

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
RUPINDER DAWODHARRY

CONSENT ORDER

RESPONDENT:	Rupinder Dawodharry, currently unlicensed, while licensed with 8 th Avenue Elite Realty Ltd.
DATE OF REVIEW MEETING:	May 24, 2018
DATE OF CONSENT ORDER:	May 24, 2018
CONSENT ORDER REVIEW COMMITTEE:	R. Holmes, Q.C. S. Heath L. Hrycan E. Mignosa S. Sidhu
ALSO PRESENT:	E. Seeley, Executive Officer G. Thiele, Director, Legal Services Jean Whittow Q.C., Legal Counsel for the Real Estate Council

PROCEEDINGS:

On May 24, 2018, the Consent Order Review Committee ("Committee") resolved to accept the Consent Order Proposal ("COP") submitted by Rupinder Dawodharry.

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

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

1. Rupinder Dawodharry be prohibited from applying for a licence for twenty five (25) years from the date of this Order;
2. Rupinder Dawodharry pay a discipline penalty to the Council in the amount of \$10,000 within one year from the date of this Order;
3. Prior to being eligible to apply for a licence Rupinder Dawodharry must successfully complete, at her own expense, the course entitled REIC2600 - Ethics in Business Practice; and
4. Rupinder Dawodharry pay enforcement expenses to the Council in the amount of \$20,000 within one year from the date of this Order.

Dated this 11th day of June, 2018, at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE



R. Holmes, Q.C., Chair
Consent Order Review Committee

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

**AND
IN THE MATTER OF
RUPINDER DAWODHARRY (148474)**

CONSENT ORDER PROPOSAL

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by Ms. Dawodharry ("Ms. Dawodharry") 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, Ms. Dawodharry and the Council have agreed upon the following facts:

1. Ms. Dawodharry was first licensed as a representative to provide trading services on April 11, 2008.
2. 8th Ave Elite Realty Ltd. dba 8th Avenue Elite Realty ("8th Avenue Elite") was first licensed as a brokerage to provide trading services on Jan 10, 2013. At all material times 8th Avenue Elite was located at # [REDACTED] and Ave, Surrey.
3. Ms. Dawodharry was licensed as the managing broker of 8th Avenue Elite from the time its licence was issued and at all material times. She was the sole managing broker and director of the brokerage at all times.
4. By operation of the RESA, on suspension of 8th Avenue Elite's licence, described more fully below, the licence of Ms. Dawodharry was rendered inoperative on August 27, 2014. Ms. Dawodharry's licence subsequently lapsed on January 9, 2015. She remains unlicensed.
5. On February 7, 2014, the Council commenced an office and records inspection of 8th Avenue Elite. As a result of the review, conditions were imposed upon the licences of 8th and Ms. Dawodharry requiring immediate replenishment of a shortfall in the trust account, a second signatory on the trust accounts and that no funds would be paid out of the brokerage trust account without the approval of the Council.
6. Between February 7 and June 17, 2014, there were multiple meetings between representatives of the Council and Ms. Dawodharry. Ms. Dawodharry assured the Council that she was ensuring that the brokerage was operating in compliance with the conditions placed on the brokerage and on her.

7. On June 17 and 18, 2014 a follow-up audit of 8th Avenue Elite was performed which disclosed that the conditions appeared not to have been met. After an exchange of correspondence with 8th Avenue Elite's counsel, the Council provided 8th Avenue Elite with a deadline of noon August 25, 2014 to deliver all outstanding requests for documentation, failing which the Council would take steps to suspend the brokerage licence under section 45(2)(a) without further notice. 8th Avenue Elite did not provide the required documents or any documents on August 25, 2014. In addition, between August 22 and 26, 2014 information was received by the Council that cheques written on 8th Avenue Elite's trust account at Envision Financial Trust had been returned for "insufficient funds".
8. As a result of the follow up audit and the concerns brought to the attention of the Council, on August 26, 2014 the Council obtained an order in Urgent Circumstances to suspend the licence of 8th Avenue Elite and to freeze its accounts under section 45 and 46 of the RESA.
9. When the Council attended at the offices of 8th Avenue Elite, upon issuance of the Order in Urgent Circumstances, the offices had been vacated and the books and records had been removed.
10. On August 27, 2014 the Council initiated a petition and obtained Orders from the BC Supreme Court pursuant to section 38 and 59 of RESA regarding 8th Avenue Elite authorizing the Council to seize all 8th Avenue Elite's business and banking records including its computers and appointing [REDACTED] and Associates as receiver over 8th Avenue Elite for 15 days. On September 12, 2014 the Council obtained an Order from the BC Supreme Court extending the duration of the order made August 27, 2014. On September 26, 2014 the Council received an Order for an indefinite extension of the order dated August 27, 2014.
11. When the Council gained access to 8th Avenue Elite's accounts through the Order in Urgent Circumstances, it was determined that on August 26, 2014, the balance in the 8th Avenue Elite brokerage trust account (142174) was negative \$91.00, the balance in the commission trust account (141697) was \$760.00 and the balance in the general account (141697) was negative \$20,022.51.
12. The Council gathered and reviewed the remaining documents from the brokerage. It was determined by the Council that there were multiple pending transactions which were jeopardized by the removal of trust funds and the removal of the relevant records. The Council staff next reconstructed the records to determine the true trust shortfall, relative to the brokerage's obligations.

13. When deposits were made to the 8th Avenue Elite trust account, the funds were commingled with any other funds in that account. The monies therein were used for a variety of purposes, unrelated to the transactions in relation to which the deposits were provided by the clients. By August 24th, 2014, deposits for any transactions to be completed after that date were not available for their intended purpose.
14. Based upon the Council's analysis, certain sales identified as pending and for which the deposit had been removed from trust were only able to complete because the Council obtained funds from the Special Compensation Fund.
15. Paragraphs 1 a to d, and 1 h and 1 i of the Notice relate to real estate trades which were identified as pending at the time the licence of the brokerage was suspended. The circumstances of the trust shortfalls associated with these trades is as follows:
- a. [REDACTED] sale of [REDACTED] 133A St. Surrey - \$10,000
In relation to this trade, a deposit of \$10,000 was paid but was not traced into a brokerage bank account. This sale completed by means of a payment from the Compensation Fund.
 - b. [REDACTED] sale of [REDACTED] 4 Street, Surrey - \$20,000
A deposit of \$20,000 was made to the brokerage trust account on August 9, 2014, at a time that there was a zero balance in that account. The transaction was to close in September, 2014. The funds were removed from trust by two cheques (#22 and #26) on August 11, 2014, both payable to 8th Avenue Elite. One of the signatories on these cheques was Ms. Dawodharry. The removal of these funds left \$1375 in trust.
 - c. [REDACTED] sale of [REDACTED] McKenzie Road, Abbotsford - \$10,000
A deposit of \$10,000 was made to the trust account on August 6, 2014, at a time that there was a negative balance in trust of -\$23.65. The transaction was to close on August 14, 2014. The funds were removed by two cheques on August 7, 2014, both payable to 8th Avenue Elite. One of the signatories on these cheques was Ms. Dawodharry.
 - d. [REDACTED] sale of [REDACTED] Station Road, Surrey - \$50,000
A deposit of \$50,000 was made to the trust account on August 14, 2014 at a time that there was a \$1375.00 in trust. The transaction was to close in December, 2014. The funds were removed by two cheques (#29 and #30) on August 14, 2014 leaving a zero balance. One of the signatories on these cheques was Ms. Dawodharry. Cheque #30, for \$47,473.50, was paid to 8th Avenue Elite.

...

h. [REDACTED] sale of [REDACTED]th Avenue - \$30,000

A deposit of \$30,000 was made to the commission trust account, instead of the trust account. The deposit was made at a time that there was \$10 in that account. The funds were removed by two cheques. A \$30,000 cheque was written to a Dawodharry holding company.

i. sale of [REDACTED]th Street - \$15,000

A deposit of \$15,000 was made to the trust account on August 18, 2014, at a time that there was a zero balance in trust. The funds were removed by a single cheque for \$15,000 payable to 8th Avenue Elite the same day. One of the signatories on this cheque was Ms. Dawodharry.

16. Ms. Dawodharry's signature appears on the cheques by which funds were removed from trust accounts.

17. In addition to Ms. Dawodharry's signature, the signature of one of two other authorized signatories appeared on all cheques. The other two authorized signatories were [REDACTED] husband, who was not a licensee, and [REDACTED], a licensee and associate broker with 8th Avenue Elite.

18. Paragraphs 1 e, f, and g of the Notice have been the subject of Decisions by Compensation Committees of the Council. Ms. Dawodharry admits that the following findings are true and correct and that she is responsible for the trust shortfalls described in paragraphs 19-21 below.

1e. [REDACTED] sale of [REDACTED] Avenue, Langley

19. In its decision of September 16, 2015, the Compensation Committee found that the brokerage was holding a deposit in connection with this transaction and that a cheque drawn on 8th Avenue Elite's trust account for \$10,569.42 was dishonoured for insufficient funds, which funds "were intentionally not paid over or accounted for" and "wrongfully removed" from trust:

The Committee further found that on August 19, 2014 the "Excess Funds" held totaling \$10,569.42 were sent to [REDACTED] by way of a cheque which was deposited to the trust accounts of [REDACTED] on August 21, 2014. The transaction completed on August 21, 2014. The Committee further finds that the "Excess Funds Held" sent to [REDACTED] on August 19, 2014 was returned NSF on August 26, 2014. [REDACTED]'s trust account was overdrawn \$10,569.42 which was covered by a cheque drawn on [REDACTED] general account and deposited to its trust account.

The Committee concluded that these funds were intentionally not paid over or accounted for to [REDACTED], who was entitled to these funds and therefore this claim within the meaning of compensable loss in section 60 of RESA. The Committee

concluded that these funds were wrongfully removed from the trust account of 8th Avenue Elite.

1f. Estate of [REDACTED] sale of [REDACTED]th Street, Langley

20. In its decision of September 16, 2015, the Compensation Committee found that the brokerage was holding a deposit in connection with this trade and that a cheque drawn on 8th Avenue Elite's trust account for \$2,599.23 was dishonoured for insufficient funds, which funds "were intentionally not paid over or accounted for" and "wrongfully removed" from trust:

The Committee further found that on August 21, 2014 8th Avenue Elite forwarded an excess funds cheque to [REDACTED]'s office in the amount of \$2,599.23 from its trust account which [REDACTED] deposited on August 22, 2014. These funds were required to complete the 208th Street transaction.

The Committee found that the transaction closed on August 22, 2014 on the basis that these funds were in [REDACTED]'s account and available to complete the transaction. The Committee further found that on August 26, 2014 the excess funds cheque from 8th Avenue Elite was dishonoured due to insufficient funds.

The Committee also found that when [REDACTED] first became aware of the dishonoured cheque on or about September 2, 2014 she made a written claim to the Compensation Fund for \$2,599.23 on September 3, 2014. [REDACTED] covered the loss with funds from her general account awaiting the outcome of these proceedings.

The Committee also found, based on [REDACTED]'s Affidavit that upon his review of 8th Avenue Elite's bank statement on the trust account that a cheque was drawn on that account in the sum of \$2,599.23 which was dishonoured for insufficient funds on September 2, 2014.

The Committee concluded that these funds were intentionally not paid over or accounted for to [REDACTED], who was entitled to these funds and therefore this claim came within the meaning of compensable loss in section 60 of RESA. The Committee concluded that these funds were wrongfully removed from the trust account of 8th Avenue Elite.

The Committee assessed compensable loss of [REDACTED] to be in the amount of \$2,599.23.

1g. [REDACTED] sale of [REDACTED] Maysfield - \$20,000

21. In its decision of September 16, 2015, the Compensation Committee found that a cheque for \$20,000 payable by the brokerage to [REDACTED] as a forfeited deposit in connection with a collapsed sale was dishonoured, which funds "were intentionally not paid over or accounted for":

After considering the definition of compensable loss in section 60 of RESA, the Committee found that 8th Avenue Elite had received a deposit in the amount of \$20,000.00 from the [REDACTED] in relation to the purchase of the property in question which deposit was held in the trust account of the brokerage. The property was being sold in a foreclosure by the mortgage holder [REDACTED]. The Committee further found that pursuant to an Order of the Supreme Court of British Columbia, the Court approved the sale of the subject property to different buyers as the [REDACTED] failed to complete the sale and ordered that the \$20,000.00 deposit be forfeited to [REDACTED].

The Committee further found that the cheque delivered to [REDACTED] as counsel for [REDACTED] that was payable to [REDACTED] by 8th Avenue Elite in this regard was dishonoured for insufficient funds.

The Committee concluded that these funds were intentionally not paid over or accounted for to [REDACTED] who was entitled to these funds and therefore this claim came within the meaning of compensable loss in section 60 of RESA.

PROPOSED FINDINGS OF MISCONDUCT

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

1. Ms. Dawodharry committed professional misconduct within the meaning of section 35(1) of RESA, including subsections (a)(contravening the RESA and Rules) and (c), (wrongful taking and deceptive dealing), and committed conduct unbecoming within the meaning of section 35(2) of RESA, in that, while licensed as the managing broker of 8th Ave Elite Realty Ltd. dba 8th Avenue Elite Realty, she misappropriated, wrongfully converted and/or intentionally failed to pay over or account to clients for monies provided to the brokerage in trust in connection with the following transactions:
 - a. [REDACTED] sale of [REDACTED] A St. Surrey;
 - b. [REDACTED] sale of [REDACTED] A Street, Surrey;
 - c. [REDACTED] sale of [REDACTED] McKenzie Road, Abbotsford;
 - d. [REDACTED] sale of [REDACTED] Station Road, Surrey;
 - e. [REDACTED] sale of [REDACTED] A Avenue, Langley;
 - f. Estate of [REDACTED] sale of [REDACTED]th Street, Langley;
 - g. [REDACTED] sale of [REDACTED] Maysfield (collapsed sale);
 - h. [REDACTED] sale of [REDACTED]th Avenue;

- i. sale of [REDACTED]^h Street.
2. Ms. Dawodharry committed professional misconduct within the meaning of section 35(1)(a) of RESA by failing to ensure that the business of the brokerage of which she was managing broker was carried out competently and in accordance with the RESA and the Council Rules, contrary to section 6(2) of RESA and section 3-1(1)(b) of the Council Rules.

PROPOSED ORDERS

Based on the Facts herein and the Proposed Findings of Misconduct, Ms. Dawodharry 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. Ms. Dawodharry be prohibited from applying for licensing for twenty five (25) years from the date of this Order;
2. Ms. Dawodharry pay a discipline penalty to the Council in the amount of \$10,000 within one year of the date of this Order;
3. Prior to being eligible to apply for relicensing Ms. Dawodharry must successfully complete, at her own expense, the course entitled REIC2600 - Ethics in Business Practice; and
4. Ms. Dawodharry pay enforcement in the amount of \$20,000 within one year of the date of this Order.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. Ms. Dawodharry 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. Ms. Dawodharry acknowledges that she 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 she has obtained independent legal advice or has chosen not to do so, and that she is making the Proposal with full knowledge of the contents and the consequences if the Proposal is accepted.
3. Ms. Dawodharry 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. Ms. Dawodharry 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. Ms. Dawodharry hereby waives her right to appeal pursuant to section 54 of the RESA.
6. The Proposal and its contents are made by Ms. Dawodharry 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 Ms. Dawodharry in any civil proceeding with respect to the matter.



RUPINDER DAWODHARRY

Dated 10, day of May, 2018

Signature of Rupinder Dawodharry witnessed
on the above date by

ASWIN DAWODHARRY
Witness Name (Please Print)



Witness Signature