

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

Donald Henry Frederiksen
(004524)

AND

O.J. Realty & Property Management Inc.
(X030678)

CONSENT ORDER

RESPONDENT:	Donald Henry Frederiksen, Managing Broker, O.J. Realty & Property Management Inc. O.J. Realty & Property Management Inc.
DATE OF REVIEW MEETING:	April 11, 2018
DATE OF CONSENT ORDER:	April 11, 2018
CONSENT ORDER REVIEW COMMITTEE:	R. Holmes Q.C. A. Leong E. Mignosa
ALSO PRESENT:	G. Thiele, Director, Legal Services J. Gossen, Legal Counsel for the Real Estate Council

PROCEEDINGS:

On April 11, 2018, the Discipline Committee ("Committee") resolved to accept the Consent Order Proposal ("COP") submitted by Donald Henry Frederiksen, on his own behalf and on behalf of O.J. Realty & Property Management Inc..

WHEREAS the COP, a copy of which is attached hereto, has been executed by Donald Henry Frederiksen, on his own behalf and on behalf of O.J. Realty & Property Management Inc.

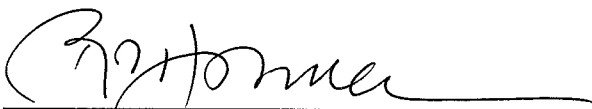
NOW THEREFORE, the Committee having made the findings proposed in the attached COP, and in particular having found that Donald Henry Frederiksen and O.J. Realty & Property Management Inc committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*, orders that:

1. Donald Henry Frederiksen be reprimanded;
2. O.J. Realty & Property Management Inc. be reprimanded;
3. Donald Henry Frederiksen pay a discipline penalty to the Council in the amount of \$2,500.00 within ninety (90) days of the date of this Order;
4. O.J. Realty & Property Management Inc. pay a discipline penalty to the Council in the amount of \$2,500.00 within ninety (90) days of the date of this Order;
5. Donald Henry Frederiksen, 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
6. Donald Henry Frederiksen and O.J. Realty & Property Management Inc. be jointly and severally liable to pay enforcement expenses of this Consent Order to the Council in the amount \$1,500.00 within sixty (60) days from the date of this Order.

If Donald Henry Frederiksen or O.J. Realty & Property Management Inc. 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 11TH day of April, 2018, at the City of Vancouver, British Columbia.

ON BEHALF OF THE DISCIPLINE COMMITTEE



R. Holmes, Q.C., 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

DONALD HENRY FREDERIKSEN
(004524)

AND

O.J. REALTY & PROPERTY MANAGEMENT INC.
(X030678)

CONSENT ORDER PROPOSAL BY DONALD HENRY FREDERIKSEN AND O.J. REALTY & PROPERTY
MANAGEMENT INC.

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by Donald Henry Frederiksen and O.J. Realty & Property Management Inc. ("O.J. Realty") 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. Frederiksen and O.J. Realty and the Council have agreed upon the following facts:

1. Mr. Frederiksen (004524) has been licensed as a managing broker since December 1, 2003.
2. Mr. Frederiksen was at all relevant times licensed as a managing broker with O.J. Realty.
3. O.J. Realty (X030678) has been licensed as a brokerage since November 28, 2012.

File 13-198

4. On August 4, 2009, C.S. signed a rental property management service agreement for a property located at #2XX-87 South Island Highway, Campbell River (the "Property"), with O.G.'s previous brokerage, Total Concept. O.G. was acting for C.S. as rental property manager for the property.
5. On or about December 1, 2009, O.G. bought the property management portfolio of Total Concept which became licensed as a new brokerage, Total Concept Realty Inc. On March 4, 2010, O.G. was licensed with Total Concept (CmRvr), and then Total Concept Realty Inc. until November 28, 2012 when O.G. opened O.J. Realty.

6. Due to this sale, C.S.'s rental property management service agreement was taken over by the succeeding brokerages.
7. O.G. advised Council that she and her office made several attempt to get C.S. to sign an updated rental property management service agreement reflecting the change of brokerages managing the Property. O.G further advised Council that she and her office received assurances from C.S. that she would sign the updated rental property management service agreement but no signature was forthcoming. O.G. continued to provide rental property management services to C.S. despite not having a written services agreement between C.S. and the succeeding brokerages and, in particular, with O.J. Realty.
8. On November 2, 2013, C.S. provided 30 days written notice to O.J. Realty terminating its services effective December 2, 2013.

File 16-028

9. On May 10, 2016, a complaint was made by the owners ("Owners") of a strata rental unit on Vancouver Island, (the "subject property"), concerning O.G., who had acted as their rental manager while licensed first with Fair Realty until December 3, 2009, then with Total Concept Realty Inc. until December 28, 2012, and then with OJ Realty.
10. On September 25, 2008, the Owners entered into a rental management service agreement between the Owners and another brokerage. The agreement commenced on October 1, 2008 for a period of 2 years, and then automatically renewed on an annual basis unless notice was given. O.G. was identified on the service agreement as the "Property Manager".
11. On December 3, 2009, O.G. transferred her licence from the other brokerage to Total Concept Realty Inc. On October 6, 2011, O.G. sent an email to the Owners, attaching a copy of a blank brokerage rental management service agreement, requesting that the Owners sign and return it to her.
12. On November 2, 2011, email correspondence between the Owners and Total Concept Realty Inc. confirm the receipt of the service agreement and confirm that the rent proceeds would be deposited to the Owners' bank account by November 15th 2011.
13. On January 3, 2012, the Owners sent an email to O.G. asking if the tenants were still in place as there had not been a deposit of any rental revenue into their bank account for December.
14. On April 17, 2012, a Form K, Notice of Tenant's Responsibilities, was signed by a tenant, D.L. and Total Concept for the rental of the subject property. The executed Tenancy Agreement commenced on April 18, 2012, and the form was signed by D.L. and the brokerage.
15. On September 4, 2012, a Form K was provided to a tenant, F.L. for the rental of the subject property but was unsigned by the tenant.

16. On November 28, 2012, O.G transferred her license from Total Concept Realty Inc. to O. J. Realty.
17. O.G had the Complainants sign an Addendum, dated December 31, 2012 which stated *"Name Change assigned to 0954785B.C.Ltd O/A O.J. Property Management From Total Concept Management & Realty Inc. agrees to cover Owners Contract until such time as a renewal Contract is signed and returned to O. J. Property Management."* At the bottom of the Addendum it stated; *"NOTE: If you want, we can send you new Contracts to sign at your convenience. Look for our new format at the end of January!"*
18. On July 11, 2013, another Form K was signed by D.M.S. for the rental of the subject property. The tenancy commenced July 15, 2013. The Tenancy Agreement was also signed and executed and became effective on July 15, 2013. The monthly rent was recorded as \$795.00.
19. On October 8, 2013, O.G. sent an email to the Owners attaching the 2012 and 2013 Owner's Ledgers and copies of the 2013 expense receipts. O.G. stated in the email that *"the Company [Brokerage] covers any shortfall that the bookkeepers make. At the end of 2012 (G.L) owed us 2 ½ mths rent, we took their security {sic} for ½ mths rent in December and they caught up the rest of it in January 2013.....then, unfortunately, the bookkeeper paid you out instead of paying back the Company for the loss...so we couldn't take any more monies out of your account until a new tenant was in...had I personally caught this sooner, I would have asked you for the difference out front, but Ann was secure in the knowledge that we would find a tenant and get it covered so it was left."*
20. The 2013 Owner's Ledger recorded rental income of \$875 collected for the months of July 2013 and August 2013, when the tenancy had not commenced until July 15, 2013, and Tenancy Agreement recorded the monthly rent as \$795.
21. On October 22, 2013, the Owners cancelled the rental management service agreement effective immediately.
22. On December 18, 2015, the Strata Council obtained copies of all Form K's from a strata manager licensed with Total Concept Realty Inc. Copies of the Form K's were forwarded to each strata lot owner by the Strata Council, asking the owner to confirm with the Strata Council the accuracy of the occupancy of their rental unit. When the Form K's were received by the Owners, they discovered that O.G. had rented out their unit on April 18, 2012, without their knowledge, and failed to provide them with the rental revenue, based on their Owner's Ledger provided by O.J. Realty.
23. O.G. submitted that the D. L. tenant hoped to move in April 2012, but the tenancy did not actually start until mid-May, at which time the tenancy commenced. O.G. stated she was unable to locate a copy of the signed rental management service agreement for the subject property.
24. In relation to the difference in the amount collected (\$875) and the recorded monthly rent payable ("\$795"), O.G. stated that the tenants were charged \$80 per month for cleaning services as *"this was a special nice unit."* O.G. further stated that the tenants moved in on

July 15, 2013 and stayed until September 15, 2013. *"Our statements don't reflect half months, it is written on top."*

25. The rental management service agreement provided by the brokerage did not include;
 - a provision of the scope of authority of the brokerage or a related licensee, when acting on behalf of the owner to sign cheques or make disbursements on behalf of the owner;
 - how security deposits, pet damage deposits and other deposits were to be dealt with;
 - a provision respecting the use and disclosure of personal information; and
 - a disclosure of remuneration other than remuneration paid directly by the client.
26. O.G. believed that the Owners were kept aware of the difficulties that the brokerage was having with the tenants and, in particular, G.L., who owed for 2.5 months rent. While the brokerage attempted to collect the rental arrears, the account remained short and the brokerage ultimately withdrew the security deposit to cover the shortfall.
27. The Owners did not give the brokerage written authorization to withdraw the security deposit held for G.L. from the trust account.
28. A Notice of Discipline Hearing for all the above files 13-198 and 16-028 was issued on April 7, 2017 and served on Mr. Frederiksen and O.J Realty.

Previous Discipline History

29. On April 30, 2014 Mr. Frederiksen and O.J. Realty & Property Management Inc. entered into a Consent Order in which Mr. Frederiksen and O.J. Realty & Property Management Inc. were both reprimanded. Mr. Frederiksen and O.J. Realty & Property Management Inc. were jointly and severally liable to pay the enforcement expenses to the Council in the amount of \$1,250.00. The Respondents admitted that they committed professional misconduct within the meaning of section 35(1)(a) of the RESA in that:
 - (a) Donald Henry Frederiksen, as managing broker for the brokerage, O.J. Realty & Property Management Inc., committed professional misconduct within the meaning of section 35(1)(a) of the RESA in that, he:
 - (i) failed to ensure that the business of the brokerage was carried out competently and in accordance with the Act and Rules, and failed to ensure that there was adequate supervision of related representatives in that he was aware that between December 13, 2012 and March 20, 2013, a representative licensed with the brokerage, O.G. published advertising in various forums that contained false and/or misleading statement, contrary to section 6(2) of the RESA and section 3-1(1) of the Rules;
 - (ii) failed to display the name of the brokerage in a prominent and easily readable way when the signage from a different brokerage from that to which he was licensed, specifically the brokerage Total Concept Management & Realty was displayed at the address for the brokerage O.J. Realty & Property Management Inc., contrary to section 4-6(2) of the Rules; and

- (iii) permitted the brokerage "for sale" signs to contain a false and misleading representation by displaying his name in association with the brokerage, Total Concept Management & Realty Inc. when he was licensed with and the managing broker of O.J. Realty, contrary to section 4-7 of the I Rules.
- (b) O.J. Realty & Property Management Inc. committed professional misconduct within the meaning of section 35(1)(a) of RESA in that, when providing rental property management services in relation to #2XX-8X South Island Highway, Campbell River; it:
 - (i) contravened section 30(1) of RESA when, after receiving notice of termination, it permitted the withdrawal of two months of management fees without authority to do so as there was no valid written services agreement providing authorization;
 - (ii) contravened section 5-1(1) of the Rules by failing to have a proper written services agreement; and
 - (iii) contravened section 8-6(4) of the Rules when it failed to turn over all the financial records, including the post-dated cheques, to the new brokerage.

PROPOSED FINDINGS OF MISCONDUCT

For the sole purposes of the Proposal and based on the Facts outlined herein, Mr. Frederiksen and O.J. Realty propose the following findings of misconduct be made by the CORC:

File 13-198

1. Mr. Frederiksen committed professional misconduct within the meaning of section 35(1)(a) of RESA in that, in his capacity as managing broker for the brokerage, in relation to the provision of rental property management services to the property at #2XX-8X South Island Highway, Campbell River, he:
 - (a) contravened sections 3-1(b) and 5-1 of the Rules and section 6(2) of RESA when he failed to ensure that the business of the brokerage was carried out competently and in accordance with the Act, regulations, rules and bylaws, by allowing related licensees to provide rental property management services without a valid written service agreement or waiver in place; and
 - (b) contravened section 30(1) of RESA when, after receiving notice of termination, he permitted the brokerage to withdraw two months of management fees without authority to do so.
2. O.J. Realty & Property Management Inc. committed professional misconduct within the meaning of section 35(1)(a) of RESA in that, when providing rental property management services in relation to #2XX-8X South Island Highway, Campbell River; it:

- (a) contravened section 30(1) of RESA when, after receiving notice of termination, it permitted the withdrawal of two months of management fees without authority to do so as there was no valid written services agreement providing authorization; and
- (b) contravened section 5-1(1) of the Rules by failing to have a proper written services agreement or waiver in place.

File 16-028

3. Mr. Frederiksen committed professional misconduct meaning of section 35(1)(a) of RESA in his role as managing broker for O.J. Realty in relation to rental property management services provided by the O.J. Realty to a rental strata lot located on Vancouver Island (the "Property") in that, contrary to sections 6(2) and 25 of the RESA and section 3-1 of the Rules, he failed to ensure that the business of the Brokerage was carried out competently and in accordance with the RESA and Rules, and failed to ensure there was adequate supervision of related representatives, when he;
- (i) permitted a related representative of O.J. Realty to use a tenant's security deposit as payment for rental arrears in December 2012 without the knowledge or consent of the client;
 - (ii) failed to ensure that O.J. Realty had a valid rental property management services agreement prior to the Brokerage providing rental property management services to a client;
 - (iii) permitted O.J. Realty to enter into a tenancy agreement on April 17, 2012 with a tenancy commencement on April 18, 2012, when the tenancy for the Property did not actually commence until May of 2012; and
 - (iv) allowed O.J. Realty to enter into a tenancy agreement effective July 15, 2013 which recorded the monthly rent as \$795 when the owner's ledger recorded the monthly rent as \$875 in July and August of 2013.

PROPOSED ORDERS

Based on the Facts herein and the Proposed Findings of Misconduct, Mr. Frederiksen and O.J. Realty propose that the Notices of Discipline Hearing in these matters be resolved through the following Orders being made by the CORC, pursuant to section 43 of the RESA:

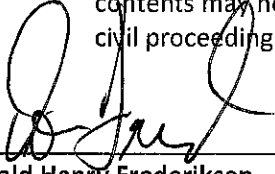
- 1. O.J. Realty be reprimanded;
- 2. Mr. Frederiksen be reprimanded;
- 3. Mr. Frederiksen pay a discipline penalty to the Council in the amount of \$2,500 within ninety (90) days of the date of this Order.
- 4. O.J. Realty pay a discipline penalty to the Council in the amount of \$2,500 within ninety (90) days of the date of this Order.

5. Mr. Frederiksen, 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.
6. Mr. Frederiksen and O.J. Realty 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.
7. If Mr. Frederiksen and O.J. Realty fail to comply with any of the terms of this Order, a Discipline Committee may suspend or cancel their licenses without further notice to them.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. Mr. Frederiksen and O.J. Realty acknowledge and understand 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. Frederiksen and O.J. Realty acknowledge that they 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 they have 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. Mr. Frederiksen and O.J. Realty acknowledge and are 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. Frederiksen and O.J. Realty acknowledge and are 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. Frederiksen and O.J. Realty hereby waive their right to appeal pursuant to section 54 of the RESA.

6. The Proposal and its contents are made by Mr. Frederiksen and O.J. Realty 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. Frederiksen and O.J. Realty in any civil proceeding with respect to the matter.



Donald Henry Frederiksen



O.J. REALTY & PROPERTY MANAGEMENT INC.

Dated 14, day of MARCH, 2018

Dated 14th, day of MARCH, 2018

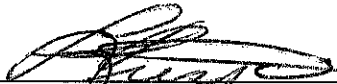
Signature of Mr. Frederiksen witnessed on the above date by

FRANCA RUSSO
Witness Name (Please Print)

FRANCA RUSSO
Witness Signature

Signature of authorized signatory for O.J. Realty & Property Management Inc. witnessed on the above date by


Witness Name (Please Print)


Witness Signature