

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

LINDA LOUISE GABARA
(123994)

CONSENT ORDER

RESPONDENT: Linda Louise Gabara, Managing Broker,
North Cariboo Realty Ltd. ,

DATE OF REVIEW MEETING: March 7, 2018

DATE OF CONSENT ORDER: March 7, 2018

CONSENT ORDER REVIEW COMMITTEE: R. Holmes Q.C.
S. Sidhu
L. Lyster

ALSO PRESENT: E. Seeley, Executive Officer
G. Thiele, Director, Legal Services
S. Sheina, Legal Counsel for the Real
Estate Council

PROCEEDINGS:

On March 7, 2018, the Discipline Committee ("Committee") resolved to accept the Consent Order Proposal ("COP") submitted by Linda Louise Gabara.

WHEREAS the COP, a copy of which is attached hereto, has been executed by Linda Louise Gabara.

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

1. Linda Louise Gabara be reprimanded;
2. Linda Louise Gabara 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. Linda Louise Gabara, at her own expense, register for and successfully complete the Rental Property Management 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. Linda Louise Gabara 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 Linda Louise Gabara fails to comply with any term of this Order, the Council may suspend or cancel her licence without further notice to her, pursuant to sections 43(3) and 43(4) of the *Real Estate Services Act*.

Dated this 7th day of March, 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

LINDA LOUISE GABARA
(123994)

CONSENT ORDER PROPOSAL BY LINDA LOUISE GABARA

BACKGROUND AND FACTS

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

1. Ms. Gabara (123994) has been licensed as a representative since May 29, 1996.
2. Ms. Gabara was at all relevant times licensed as a Managing Broker with North Cariboo Realty Ltd.
3. The complainant, TQ, owner of a home on Cypress Road in Quesnel, B.C. (the "Property"), alleged that Ms. Gabara spent approximately \$25,000 renovating the Property, which was more than the authorized and agreed upon amount of \$7,500. TQ further stated that prior to the renovations, a prospective tenant was prepared to pay \$900 per month for rental of the Property.
4. On August 21, 2013, TQ entered into a property management agreement with the Brokerage with respect to his Property.
5. On August 21, 2013, TQ also entered into a joint agreement with Ms. Gabara and a contractor, TS in which he agreed to pay "\$7,500 for remodeling and upgrading" to his Property. The joint agreement further stated:

"funds to be reimbursed on a monthly basis from rents payable to North Cariboo Realty Ltd. Property Management fees shall be deducted first from the rental amount and the remainder applied towards balance owing until Paid in Full."

6. TQ stated that the \$7,500 for remodeling and upgrading his Property included the cost of materials and labour for painting, flooring and the countertop. TQ further stated that the

wood paneling on the wall, tile work on the fireplace and carpet on the stairs was not part of the renovation agreement and had not been authorized.

7. In response to Council's investigation, Ms. Gabara provided a written statement dated January 5, 2015 ("Response to Council"), in which she stated that she, TS and TQ did a walk through of the Property and it was understood between the three of them that \$7,500 was only for the cost of labour for the renovations and materials would be paid at cost through the Brokerage's vendor accounts.
8. Council staff made numerous attempts to contact TS, who did not return any of the messages left on his personal cell phone.
9. Ms. Gabara stated in her Response to Council that during the renovations "*there were unexpected extras that needed to be addressed before the work could be completed.*" She also stated that TQ was attending school out of province and "*was not always available to communicate with, but his parents, who live in Quesnel, BC, could be. [TQ]'s parents were on site a minimum of once a week and approved many changes to the work being performed and said they would notify [TQ] of the progress of the work being performed.*" [emphasis added]

10. TQ stated to Council staff that he was the only person authorized to act on behalf of the Property and did not give his parents authorization to act on his behalf. Council staff spoke with TQ's parents who stated they visited the Property three to four times during the renovations but were never asked to authorize any extra work.
11. Ms. Gabara stated that the extra repairs would have had to be fixed during normal operations of managing the Property and were unrelated to the renovations. She also stated that the additional repairs would have been captured in the property management agreement that allowed the manager to make repairs without the prior approval of the owner on items less than \$300.
12. Ms. Gabara stated in her Response to Council that "*additional works performed were \$800 labour over and above the original labour price of \$7,500*". She also stated that she and TS agreed to carry out the work at a lower rate so TQ could get his home completed and rented as soon as possible.
13. Ms. Gabara stated all renovations were completed in October 2013. On October 1, 2013, a tenancy agreement was drawn for the Property and was rented for \$1,300 per month. The Brokerage held the security deposit on behalf of TQ.
14. Ms. Gabara stated that the total rents collected from the Property were \$16,690 during the period of the tenancy from mid October 2013 to October 31, 2014.
15. Ms. Gabara provided a breakdown showing the disbursement of \$16,690 as follows:
 - (i) \$ 3,844.99 regular maintenance
 - (ii) \$ 5,250.90 material cost for renovations
 - (iii) \$ 3,876.00 labour costs for renovations

(iv)	\$ 1,979.25	monthly management fees
(v)	<u>\$ 1,738.86</u>	paid to TQ
	<u>\$16,690.00</u>	TOTAL

16. Two charges identified under "regular maintenance" were over \$300. The first was in the amount of \$2,988.26 for the front and back steps to the basement and the second was in the amount of \$544.88 for a new fridge.
17. Another charge under "regular maintenance" was to EL, an unlicensed person to carryout inspections on the Property, an activity that can not be carried out by an unlicensed assistant.
18. Ms. Gabara further stated in her Response to Council that although the initial agreement stated that the property management fees payable to the Brokerage would be deducted monthly from the rent, she changed this agreement to allow the vendors bills to be paid first. She stated that she *"agreed to hold off deducting these management fees until all outstanding bills had been paid (i.e. labour, materials)."*
19. The Brokerage provided a written record that documented its communication with TQ:
 - (i) October 21, 2013, TQ called Ms. Gabara with respect to his Property. Ms. Gabara returned his call and confirmed his email address.
 - (ii) October 21, 2013, the Brokerage emailed TQ colour photos of the completed renovations on the Property.
 - (iii) December 16, 2013, the Brokerage sent an email to TQ requesting his mailing address so that they could send him monthly statements. Ms. Gabara stated that they did not receive a reply.
 - (iv) July 18, 2014, TQ emailed Ms. Gabara and provided updated contact information for his cell phone and email.
 - (v) August 6, 2014, TQ called to speak with Ms. Gabara and left the message "you'll know".
20. TQ stated that In August 2014, he contacted the Brokerage about his account and specifically the payments that remained outstanding. On August 15, 2014, the Brokerage provided TQ with a written breakdown of unpaid amounts that totaled \$6,282.50 for the following: \$1,706.25 payable for Brokerage management fees; \$2,409 payable to TS who had only been paid \$391 for his labour; and \$152.25 for gutter cleaning. Ms. Gabara stated she had written off a balance in the amount of \$2,015 that was still owed to her for labour.
21. On September 29, 2014, TQ provided notice to Ms. Gabara that he wished to terminate the rental service agreement with the Brokerage. Ms. Gabara terminated services 30 days later on October 29, 2014, as per the terms of the service agreement.
22. On or about October 29, 2014, Ms. Gabara forwarded the rental security deposit to the tenants without first obtaining the approval or consent of TQ.
23. An amended Notice of Discipline Hearing was issued on October 5, 2017 and served on Ms. Gabara's legal counsel.

Previous Discipline History

24. On September 3, 2013, Ms. Gabara entered into a consent order with the Council that she:
- (a) failed to ensure that the brokerage had a written services agreements in place with the owners before providing rental property management services to the owners, as required by section 5-1(1)(b) of the Council Rules;
 - (b) failed to ensure that the brokerage included a description of the records to be kept by the brokerage on behalf of the owners in the written services agreement , as required by section 5-1(5)(e) of the Council Rules;
 - (c) failed to provide the owners with a statement showing the collection of the security deposit from the tenants, W. and R.L.;
 - (d) failed to collect the security deposit from a new tenant, C.A. at the commencement of the tenancy; and
 - (e) failed to collect pet damage deposit from a tenant, K.M. as instructed by the owners.
 - (f) failed to disclose to the said owners and her brokerage in writing that her husband was going to receive a benefit for providing plumbing services to the said property before her husband received the said benefit

Ms. Gabara was reprimanded and ordered to successfully complete the Rental Property Management Remedial Education Course in the time period as direction by the Council and ordered to pay enforcement expenses in the amount of \$1,000.00 within sixty (60) days.

PROPOSED FINDINGS OF MISCONDUCT

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

1. Ms. Gabara committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* when she provided real estate services to the owner of a property on Cypress Avenue, Quesnel, BC (the "Property"), in that she:
 - a. entered into an agreement with the owner of the Property to provide rental property management services and at the same time entered into a separate contract with the owner to carry out renovations to the Property and pay herself from the rental income realized from the Property, contrary to sections 3-3(a), 3-3(f), 3-3(i) and 3-3(j) of the Rules;
 - b. carried out additional renovations to the Property, without obtaining instructions from the owner, contrary to sections 3-3(a), 3-3(b) and 3-3(c) of the Rules;

- c. returned the security deposit to the tenants without the consent or approval of the owner of the Property, contrary to sections 3-4, 3-3(a), 3-3(b) and 3-3(c) of the Rules; and
- d. permitted payment to EL, an unlicensed person who provided real estate services, when she carried out inspections on the Property, contrary to section 6-1 of the Rules.

PROPOSED ORDERS

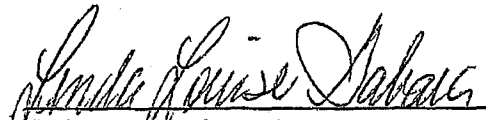
Based on the facts herein and the Proposed Findings of Misconduct, Ms. Gabara proposes that the Notice of Discipline Hearing in this matter be resolved through the following Orders being made by the CORC, pursuant to section 43 of the RESA:

1. Ms. Gabara be reprimanded.
2. Ms. Gabara 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. Ms. Gabara, at her own expense, register for and successfully complete the Rental Property 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. Ms. Gabara pay enforcement expenses in the amount of \$1,500.00 within sixty (60) days from the date of this Consent Order.
5. If Ms. Gabara fails to comply with any of the terms of this Order, a Discipline Committee may suspend or cancel Ms. Gabara's licence without further notice to her.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. Ms. Gabara 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. Gabara 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. Gabara 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.

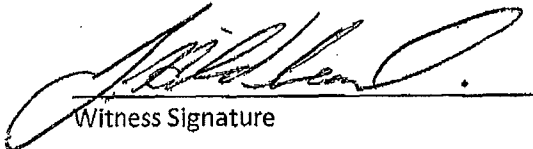
4. Ms. Gabara acknowledges and is aware that the Superintendent of Real Estate has the right, pursuant to section 54 of the RESA, to appeal any decision of the Council, including any Consent Order made by the Council in relation to this matter.
5. Ms. Gabara hereby waives her right to appeal pursuant to section 54 of the RESA.
6. The Proposal and its contents are made by Ms. Gabara 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. Gabara in any civil proceeding with respect to the matter.


Linda Louise Gabara

Dated 12 day of JUN., 2018

Signature of Ms. Gabara witnessed on the above
date by

TRACY HILDERAND
Witness Name (Please Print)


Witness Signature