

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

IN THE MATTER OF

ALEXANDER DUYGU MORET
(170122)

CONSENT ORDER

RESPONDENT: Alexander Duygu Moret

DATE OF REVIEW MEETING: February 28, 2018

DATE OF CONSENT ORDER: March 1, 2018

DISCIPLINE COMMITTEE: L. Hrycan

ALSO PRESENT: Esther Jeon, Legal Counsel for the Real Estate Council
Catherine Davies, Legal Counsel for the Real Estate Council

PROCEEDINGS:

On February 28, 2018, the Discipline Committee resolved to accept the Consent Order Proposal ("COP") submitted by Alexander Duygu Moret.

WHEREAS the COP, a copy of which is attached hereto, has been executed by Alexander Duygu Moret

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

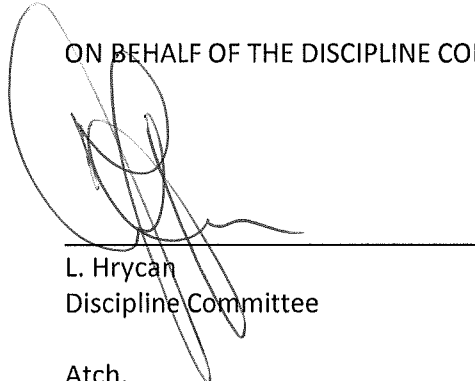
1. Alexander Duygu Moret's licence be suspended for twenty-one (21) days;
2. Alexander Duygu Moret be prohibited from acting as an unlicensed assistant during the licence suspension period;
3. Alexander Duygu Moret pay a discipline penalty to the Council in the amount of \$2,500.00 within ninety (90) days of the date of this Order;

4. Alexander Duygu Moret, at his own expense, 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;
5. Alexander Duygu Moret pay enforcement expenses in the amount of \$3,000.00 within sixty (60) days from the date of this Order;

If Alexander Duygu Moret 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 1st day of March, 2018 at the City of Vancouver, British Columbia.

ON BEHALF OF THE DISCIPLINE COMMITTEE



L. Hrycan
Discipline Committee

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

IN THE MATTER OF

**ALEXANDER DUYGU MORET
(170122)**

CONSENT ORDER PROPOSAL BY ALEXANDER DUYGU MORET

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by Alex Duygu Moret ("Mr. Moret") to the member of the Discipline Committee presiding over the Settlement Conference conducted by the Real Estate Council of British Columbia ("Council") pursuant to section 41 of the *Real Estate Services Act* ("RESA").

For the purposes of the Proposal Mr. Moret and the Council have agreed upon the following facts:

Licensing Histories

1. Mr. Moret (170122) has been licensed as a representative since 2015 and was at all relevant times licensed as a representative with Zolo Realty (BC) Inc. ("Zolo Realty").

The Collapsed Deal: The First Contract

2. This matter relates to a transaction that collapsed with respect to a property located at [REDACTED] Saturna Drive, Burnaby, B.C. (the "First Property"). Mr. Moret acted for the buyers (the "Buyers") in the subject transaction and a subsequent transaction for a different property which completed successfully.
3. The Buyers were experienced real estate investors from Alberta and were prepared to purchase multiple properties.
4. On January 21, 2016, the sellers of the First Property (the "Sellers") and the Buyers entered into a Contract of Purchase and Sale (the "First Contract") with respect to the First Property at the purchase price of \$267,000.00. The First Contract was subject to a number of conditions, including financing, inspection, approval of Property Disclosure Statement and strata documents, among other subjects, to be removed by January 30, 2016.
5. The First Contract provided for a deposit in the amount of \$15,000.00, due within 24 hours of acceptance of the contract and to be held in trust by Zolo Realty. The Buyers submitted a bank draft in the amount of \$15,000.00 and the funds were entered into the brokerage trust account.

6. On January 25, 2016, Mr. Moret received an e-mail from the Buyers' mortgage broker advising that financing was unlikely to be approved for the purchase of the First Property. The mortgage broker also advised the Buyers of the "bad news".
7. On January 26, 2016, the mortgage broker confirmed in an e-mail that several lenders had concerns about the ongoing repairs and *"won't lend on the property until all is complete and everything finalized in terms of assessments etc."*.
8. On January 27, 2016, Mr. Moret advised the Sellers' agent, TK, by e-mail that the Buyers were unable to obtain financing and enclosed a copy of the message from the mortgage broker. Mr. Moret asked TK for a release from the First Contract.
9. Also on January 27, 2016, the Buyers submitted an offer on another property located in the same strata complex but in a different building (the "Second Property"). The Second Property was a three-bedroom unit, as opposed to the First Property which was a two-bedroom unit, and it was upgraded with over \$60,000.00 worth of renovations.
10. On January 28, 2016, TK introduced Mr. Moret to another mortgage broker and made efforts to salvage the First Contract. The mortgage broker reviewed the file and confirmed that financing for the First Property would be unlikely to be approved due to various concerns about ongoing repairs.
11. On January 29, 2016, and again on February 11, 2016, Mr. Moret sent e-mails to TK requesting a mutual release from the First Contract. In both e-mails, he attached forms provided by the local real estate board for reporting collapsed deals and terminating listing contracts. Neither form was correct for releasing parties to a contract of purchase and sale where deposit monies were being held in trust. Both forms were recommended by his managing broker, MA.
12. MA acknowledged that he provided guidance to Mr. Moret but inadvertently misdirected him to use incorrect forms.
13. On February 18, 2016, Mr. Moret e-mailed TK the correct mutual release form (the "Release Form") for releasing the parties from the First Contract and trust monies, and asked TK for her clients' signatures. Mr. Moret explained in the e-mail that his clients did their best to complete the deal on the First Property.
14. The Release Form, although it was the correct form, contained the following errors: 1) the date of the First Contract was indicated as January 20, 2016, when in fact it was entered into on January 21, 2016; 2) the \$15,000.00 deposit was to be released to "Zolo Realty in trust" instead of the Buyers; and 3) Mr. Moret signed the document as a witness to the signatures of the Buyers, which was inappropriate given that the Buyers signed the document electronically in Alberta.
15. In any event, the Sellers refused to sign the Release Form and entered into a dispute with the Buyers and Zolo Realty to claim the deposit.

The Deposit

16. In the meantime, the Buyers proceeded with the Contract of Purchase and Sale with respect to the Second Property (the "Second Contract") which was accepted on January 27, 2016. The Second Contract also provided for a \$15,000.00 deposit due within 24 hours of acceptance.
17. The Buyers did not have any issues obtaining financing for the purchase of the Second Property and removed subjects on February 10, 2016.
18. Mr. Moret advised the Buyers that a separate deposit was required for the Second Contract. Nonetheless, the Buyers instructed Mr. Moret to use the deposit from the First Contract for the Second Contract. On February 16, 2016, acting on the Buyers' instructions, Mr. Moret advised the conveyance staff at Zolo Realty that the deposit for the Second Contract was to be drawn from the deposit being held in trust for the First Contract.
19. On February 16, 2016, the deposit for the First Contract was "released" to the Buyers from the trust account but it was immediately re-entered into the trust account for the Second Contract.
20. At this point, the deposit with respect to the Second Contract was late, as it was due on January 28, 2016. Mr. Moret did not advise his managing broker or the Buyers that the deposit was late, nor did he advise the Buyers to seek legal advice on the risks associated with late deposits.
21. There is no evidence that the sellers of the Second Property took issue with the late deposit. In any event, the transaction proceeded without incident.
22. On April 8, 2016, in response to instructions from the Buyers, MA instructed the conveyance staff at Zolo Realty that the deposit from the First Contract was to be used as deposit for the Second Contract.
23. The Sellers of the First Property continued to claim the \$15,000.00 deposit but learned that the funds had already been disbursed from the trust account.
24. On April 9, 2016, TK e-mailed Mr. Moret with a proposal that the Sellers and the Buyers split the deposit in equal halves of \$7,500.00. Managing brokers of both brokerages became involved and attempted to resolve the dispute.
25. The Second Contract completed on April 26, 2016.
26. On or about March 20, 2017, at the direction of the Council, Zolo Realty transferred \$15,000.00 into its trust account to restore the deposit for the First Contract.
27. The dispute over the deposit was resolved in July 2017 when Zolo Realty and the Sellers entered into a mutual release agreement.
28. A Notice of Discipline Hearing was issued on August 15, 2017, and served on Mr. Moret.

29. Mr. Moret does not have a prior discipline history with the Council.
30. Mr. Moret was cooperative with the Council's investigation and emphasized that they take these matters seriously. MA explained that Zolo Realty has a policy, which was instituted long before this matter arose, that trust funds be released only in certain circumstances set out in section 30(2) of the RESA, and that this incident was truly an isolated error. An audit conducted by the Council confirmed that other than minor inconsistencies, there were no concerns with respect to the operation of Zolo Realty.

PROPOSED FINDINGS OF MISCONDUCT

For the sole purposes of the Proposal and based on the facts outlined herein, Mr. Moret proposes the following findings of misconduct be made by the member of the Discipline Committee presiding over the Settlement Conference:

1. Mr. Moret, while acting as a representative for Zolo Realty, committed professional misconduct within the meaning of section 35(1)(a) of the RESA in that:
 - a. contrary to sections 3-3(a) and 3-4 of the Rules, Mr. Moret failed to act in the best interest of his clients and with reasonable care and skill, in that:
 - i. in the course of releasing his clients from the First Contract, he filled out the Release Form with incorrect details, such as the wrong date of the contract and the wrong party to whom the deposit should be disbursed; and he signed the Release Form as a witness to the Buyers' signatures, which was inappropriate given that the document was signed electronically by the Buyers in Alberta;
 - ii. when the First Contract collapsed, despite having given advice to the buyers to provide a second deposit, he nevertheless took instructions from the Buyers to use the deposit for the First Contract as deposit for the Second Contract,;
 - iii. he failed to advise the Buyers that the deposit for the Second Contract, which was due on January 28, 2016 but not submitted until February 16, 2016, was late;
 - iv. he sought the release of the deposit for the First Contract from the brokerage trust account without a written agreement of the parties;
 - b. contrary to section 3-3(d) of the Rules, he failed to advise the Buyers to seek independent professional advice on matters outside of his expertise when:
 - i. the Buyers instructed him to use the deposit for the First Contract as deposit for the Second Contract; and
 - ii. the deposit for the Second Contract was not submitted within 24 hours of acceptance as stipulated in the contract; and

- c. contrary to section 3-2(2)(b) of the Rules, he failed to immediately notify his managing broker that the deposit set out in the Second Contract was not received in accordance with the contract.

PROPOSED ORDERS

Based on the facts herein and the Proposed Findings of Misconduct, Mr. Moret proposes that the Notice of Discipline Hearing in this matter be resolved through the following Orders being by the member of the Discipline Committee presiding over the Settlement Conference, pursuant to section 43 of the RESA:

1. Mr. Moret pay a discipline penalty to the Council in the amount of \$2,500.00 within ninety (90) days of the date of this Order;
2. Mr. Moret's licence be suspended for twenty-one (21) days;
3. Mr. Moret be prohibited from acting as an unlicensed assistant during the licence suspension period;
4. Mr. Moret, at his own expense, 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;
5. Mr. Moret pay enforcement expenses in the amount of \$3,000.00 within sixty (60) days from the date of this Order;
6. If Mr. Moret fails to comply with any of the terms of the Order set out above, a Discipline Committee may suspend or cancel his licence without further notice to them.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. Mr. Moret 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.
2. Mr. Moret 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.
3. Mr. Moret 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.
4. Mr. Moret hereby waives his right to appeal pursuant to section 54 of the RESA.

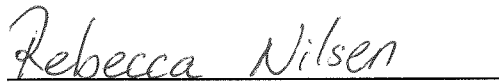
5. The Proposal and its contents are made by Mr. Moret for the sole purpose of resolving the Notice of Discipline Hearing in this matter and do not constitute an admission of civil liability. Pursuant to section 41(5) of the RESA, the Proposal and its contents may not be used without the consent of Mr. Moret in any civil proceeding with respect to the matter.



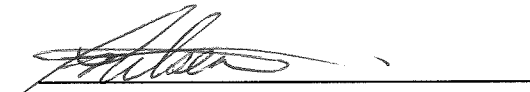
ALEXANDER DUYGU MORET

Dated 28, day of Feb, 2018

Signature of Alexander Duygu Moret witnessed on the above date by:



Witness Name *(Please Print)*



Witness Signature