

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

AND IN THE MATTER OF

TRACY LIANE GOODWIN

REASONS FOR DECISION

REGARDING LIABILITY

DATE AND PLACE OF HEARING:	Not applicable; this hearing proceeded in writing by consent
DISCIPLINE HEARING COMMITTEE:	Thelma O’Grady (Chair) Gerry Martin Sandra Heath
COUNSEL FOR RECBC:	Sabinder Sheina – Solicitor for the Real Estate Council
RESPONDENT:	Tracy Liane Goodwin, appearing on her own behalf

INTRODUCTION

[1] The hearing was conducted before a Discipline Hearing Committee (the “Committee”) of the Real Estate Council of British Columbia (the “Council”) pursuant to section 42 of the *Real Estate Services Act*, R.S.C. 2004, c.42 (“RESA” or the “Act”) to consider whether Ms. Tracy Liane Goodwin (the “Respondent”) committed professional misconduct within the meaning of section 35(1) of RESA.

[2] This matter relates to a real property transaction the Respondent and another licensee completed in August 2014. The Respondent learned after the close of the deal that she had not completed a required Disclosure of Remuneration Form, and had failed to disclose to her client, in writing, the amount of remuneration paid or payable to her brokerage. The Respondent completed and backdated the required document and attempted to present it as if it had been completed in August 2014.

ISSUES

[3] The issues before the Committee are set out in the allegations in the Amended Notice of Discipline Hearing dated August 11, 2017:

- a. “You committed professional misconduct within the meaning of section 35(1)(a) of RESA in that, while acting for the buyer of a property... you:

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- i. “failed to disclose to your client, in writing, the amount of remuneration paid or payable to your brokerage in relation to the real estate services provided for the property, contrary to section 5-11(2) of the Rules; and
 - ii. “failed to promptly provide your managing broker with originals or copies of all trading records for the acquisition of the property by not providing the Disclosure of Remuneration form to your managing broker, contrary to section 3-2 of the Rules.
- b. “You committed professional misconduct within the meaning of section 35(1)(g) of RESA in that you made or allowed to be made a false or misleading statement in a document that is required or authorized to be produced or submitted under RESA, when you:
 - i. “presented the Council with a Disclosure of Remuneration form that you asserted was filled out at the time of the sale and purchase of the property and e-mailed to your clients, when in fact no Disclosure of Remuneration form was ever filled out or e-mailed to your clients, and instead the form that you sent to the Council was actually filled out almost nine months after the sale of the property, contrary to section 37(4) of RESA and section 3-4 of the Rules.”

PROCEEDINGS

[4] On September 15, 2017, the parties came before the Committee for a pre-hearing teleconference, during which they requested and each party consented to proceed with this hearing on liability in writing. The basis for the request was that the parties wished to propose a jointly-proposed verdict. The Committee granted this request, and this hearing proceeded in writing. On October 11, 2017, the Committee advised the parties that it had determined liability, with reasons to follow. These are the Committee's reasons on liability.

BURDEN OF PROOF AND EVIDENCE

[5] Under section 43 of RESA, the Committee may determine that the Respondent has committed professional misconduct, conduct unbecoming a licensee, or dismiss the matter.

[6] The burden of proof is on the Council to demonstrate that the Respondent committed professional misconduct. The standard of proof is, as in every civil case, the balance of probabilities. This means that the Committee must be satisfied, based on evidence that is sufficiently clear, convincing and cogent, that the occurrence of an event was more likely than not. *F.H. v. McDougall*, 2008 SCC 53.

[7] The Committee is an administrative tribunal that is not bound by court rules of evidence, in the absence of any statutory provision to the contrary, and it may consider

any evidence it considers relevant: *Wilson v. Esquimalt and Nanaimo Railway Company Co.*, [1922] 1 A.C. 202 (P.C.) [B.C.]; *Kane v. The Board of Governors (University of British Columbia)*, [1980] 1 S.C.R. 1105; *Hale v. B.C. (Superintendent of Motor Vehicles)*, 2004 BCSC 1358 at para. 23. The Committee may, however, draw upon principles underlying court rules of evidence to exclude or assess evidence.

[8] The Committee must also afford procedural fairness to a respondent where a decision may affect his or her rights, privileges, or interests. This right includes a right to be heard. The Committee affords every respondent an opportunity to respond to the case against him or her by providing advance notice of the issues and the evidence, and an opportunity to present evidence and argument. The Committee must determine facts, and decide issues set out in the Notice of Discipline Hearing, based on evidence. Committee members may, however, apply their individual expertise and judgment to how they evaluate or assess evidence.

REASONS

The evidence before the Committee

[9] In the present case, the Hearing for the Decision Regarding Liability was conducted by written submissions consisting of a Joint Book of Documents (Exhibit 1), an Agreed Statement of Facts and Admissions, and a Joint Submissions on the Issue of Liability.

Findings of fact

[10] The relevant evidence set out in the Agreed Statement of Facts and Admissions is as follows:

- a. In June 2014, the Respondent and another licensee from the same Brokerage were designated as co-listing agents for a property in Lindell Beach, BC (the "Property").
- b. On August 28, 2014, the Respondent and the other licensee signed a Limited Dual Agency Agreement with the buyers and the seller.
- c. On August 30, 2014, the seller accepted the contract of purchase and sale (the "Contract") dated August 28.
- d. On September 5, 2014, the Respondent handed the contract deal sheet to her brokerage office. Her conveyancer informed her at that time that they did not have the Commission Confirmation (the "Form") signed yet and it was needed for the file.
- e. Over the next period of time, the Respondent, on several occasions, called and emailed the buyers requesting that they sign and return the Form. She emailed them the Form and left a hard copy of it at the front desk of her office.

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- f. In March 2015, the buyers filed a complaint with the Council alleging that the Respondent did not act in their best interests and asked the Council to investigate.
 - g. On April 29, 2015, in response to this investigation, the Respondent's managing broker submitted a copy of the deal file for the Property. Upon review, Council staff noted that the deal file did not include a copy of the Form. They also concluded there was no basis to support any of the complaints made by the buyers.
 - h. On May 14, 2015, Council staff asked the Respondent to provide a copy of the Form. She provided Council staff with an unsigned copy of the Form. Part D of the Form, the "Acknowledgement" section had conflicting dates. On the line where the buyers were supposed to have signed their acknowledgement of the disclosure, the date was filled in as May 14, 2015. On the line where the Respondent's name was printed and where she in fact signed, the date read August 2014.
 - i. In response to Council staff's inquiries as to why one date on the Form was dated almost nine months after the date of the purchase and sale of the Property, the Respondent stated that when she went online to download the Form, WEBforms® automatically defaulted to the date of the download and inserted May 14, 2015 on the line.
 - j. Council staff followed up with the Product Manager of WEBforms® who stated that the dates on the Form are "text only fields" and that they do not auto-populate nor do they flow from other contracts or automatically "fill" themselves. The "text only fields" require input from licensees.

[11] As addressed below, the Respondent now admits that she filled out the form that she sent to Council almost nine months after the sale of the Property.

Findings on professional misconduct

[12] The term "professional misconduct" is defined in RESA. The relevant section for this case is:

35(1) a licensee commits professional misconduct if the licensee does one or more of the following:

(a) contravenes the Act, the regulations or the rules;

...

(g) makes or allows to be made any false or misleading statement in a document that is required or authorized to be produced or submitted under this Act.

[13] In this matter, the Respondent has made the following admissions of professional misconduct in the Agreed Statement of Facts and Admissions dated October 4, 2017:

- a. The Respondent committed professional misconduct within the meaning of section 35(1)(a) of RESA in that... she:
 - i. failed to disclose to her client, in writing, the amount of remuneration paid or payable to her brokerage in relation to the real estate services provided for the property, contrary to section 5-11(2) of the Rules; and
 - ii. failed to promptly provide her managing broker with originals or copies of all trading records for the acquisition of the property by not providing the Disclosure of Remuneration form to her managing broker, contrary to section 3-2 of the Rules.
- b. The Respondent committed professional misconduct within the meaning of section 35(1)(g) of RESA in that she made or allowed to be made a false or misleading statement in a document that is required or authorized to be produced or submitted under RESA, when she:
 - i. presented the Council with a Disclosure of Remuneration Form that she asserted was filled out at the time of the sale and purchase of the property and e-mailed to her clients, when in fact the form that she sent to the Council was actually filled out almost nine months after the sale of the Property, contrary to section 37(4) of RESA and section 3-4 of the Rules.

[14] After considering all of the evidence and these admissions, the Committee deliberated. The Committee acknowledged its duty to make findings, if any, of professional misconduct on a balance of probabilities and with clear and cogent evidence.

DECISION

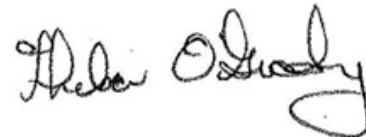
[15] On the basis of the evidence and admissions, the Discipline Hearing Committee determines that the Respondent, Tracy Liane Goodwin, committed professional misconduct within the meaning of section 35(1)(a) of RESA in that, while acting for the buyer of the Property, she:

- a. failed to disclose to her client, in writing, the amount of remuneration paid or payable to her brokerage in relation to the real estate services provided for the Property, contrary to section 5-11(2) of the Rules; and
- b. failed to promptly provide her managing broker with originals or copies of all trading records for the acquisition of the Property by not providing the Disclosure of Remuneration form to her managing broker, contrary to section 3-2 of the Rules.

[16] The Discipline Hearing Committee also determines that the Respondent, Tracy Liane Goodwin, committed professional misconduct within the meaning of section 35(1)(g) of RESA in that she made or allowed to be made a false or misleading statement in a document that is required or authorized to be produced or submitted under RESA, when she presented the Council with a Disclosure of Remuneration form that she asserted was filled out at the time of the sale and purchase of the property and e-mailed to her clients, when in fact she filled out the form that she sent to the Council almost nine months after the sale of the property, contrary to section 37(4) of RESA and section 3-4 of the Rules.

DATED at VANCOUVER, BRITISH COLUMBIA this 15th day of January, 2018.

FOR THE DISCIPLINE HEARING COMMITTEE



Thelma O'Grady
Discipline Hearing Committee Chair



Gerry Martin
Discipline Hearing Committee Member



Sandra Heath
Discipline Hearing Committee Member

LIST OF EXHIBITS

Exhibit 1 - Joint Book of Documents